

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE : Chapter 11  
:  
LYONDELL CHEMICAL COMPANY : Case No. 09-10023-mg  
:  
and MILLENNIUM CUSTODIAL TRUST, : New York, New York  
: Monday, October 17, 2016  
: P.M. Session  
Debtors. : 2:21 p.m. to 05:23 p.m.  
.....  
EDWARD S. WEISFELNER, :  
as Litigation Trustee, :  
vs. :  
THE LEGAL REPRESENTATIVE OF : Adv. Proc. 09-01375-mg  
THE ESTATE OF RICHARD. :  
.....  
EDWARD S. WEISFELNER, :  
as Litigation Trustee : Adv. Proc. 11-01844-mg  
vs. :  
NAG INVESTMENTS, LLC, et al. :  
.....

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

LITIGATION TRUSTEE BROWN RUDNICK  
& CREDITOR TRUSTEE: 7 Times Square  
New York, New York 10036  
BY: SIGMUND S. WEISSNER-GROSS, ESQ.  
BY JUSTIN WEDDLE, ESQ.  
BY: STEVEN D. POHL, ESQ.  
BY: MAY ORENSTEIN, ESQ.  
BY: STEVEN D. POHL, ESQ.

(Appearances Continued)

Audio Operator: Electronically Recorded  
by F. Ferguson, ECRO

AudioEdge Transcription, LLC  
23 Vreeland Road, Suite 204  
Florham Park, NJ 07932  
(973) 618-2310, 973) 618-2311 (Fax)  
[www.audioedgetranscription.com](http://www.audioedgetranscription.com)

Proceedings recorded by electronic sound recording,  
transcript produced by certified transcription service.

A P P E A R A N C E S (Continued)

ACCESS DEFENDANTS: QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
BY: SUSHEEL KIRPALANI, ESQ.  
BY: RICHARD T. WERDER, JR., ESQ.  
BY: REX LEE, ESQ.

NAG DEFENDANTS, et al: KLEE TUCHIN BOGDANOFF & STERN, LLP  
1999 Avenue of the Stars  
Thirty-Ninth Floor  
Los Angeles, California 90067  
BY: KENNETH N. KLEE, ESQ.

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RALPH TULIANO	131			

E X H I B I T S

		<u>IDENT</u>	<u>EVID</u>
Tuliano Cross 1	Tuliano Work Papers	132	
Tuliano Cross 3	Chart of Cases	154	
Tuliano Cross 4	Chart of Cases	158	
Tuliano Cross 5	Chart of Cases	192	
Tuliano Cross 6	Chart of Totals	193	
Tuliano Cross 7	Calculations	216	
Tuliano Cross 8	Calculations	220	

1 (Proceedings commence at 02:21 p.m.)

2 THE COURT: All right, please be seated.

3 MR. WEDDLE: Good afternoon, Your Honor, Justin  
4 Weddle for the Trustee.

5 Just before we call our first live witness, I  
6 wanted to take care of some formalities. At this time, on  
7 behalf of the Trustee we offer the deposition designations  
8 that are included in the pre-trial order, Your Honor.

9 THE COURT: All right. The Court is in the process  
10 of reviewing all of the designations, counter designations  
11 and objections.

12 What I will do -- well, let me ask Mr. Kirpalani  
13 what your view about is. I mean I'm -- I am -- I intend to  
14 rule on all of the objections. I'm not in a position to do  
15 it right at the moment, but I will be in the next day or two.

16 MR. KIRPALANI: Yes, Your Honor. Susheel Kirpalani  
17 from Quinn Emanuel for the record.

18 I think Your Honor said during one of the last  
19 status conferences that your practice is to provisionally  
20 allow --

21 THE COURT: Yes.

22 MR. KIRPALANI: -- in circumstances like this. We  
23 of course have no objection to that.

24 THE COURT: All right. So that -- again, I had  
25 made some comments during the last -- during the pre-trial

1 that I also want witnesses to come on once. I essentially do  
2 that with depositions as well.

3 So what I'm going to do is I'm going to  
4 conditionally admit in evidence all of the designations and  
5 counter designations testimony, subject to the Court's ruling  
6 on the objections that have been made.

7 And what I will probably do is prepare an order  
8 that refers by deposition page, whether as every line number  
9 we'll see, with the ruling. Just a very short ruling, you  
10 know, sustained or overruled with respect to the objections  
11 and one can look at the transcript.

12 It was very useful the way -- it was done the way I  
13 wanted it to be done. The depositions, clearly. You know, I  
14 have one set of transcripts that show the designations,  
15 counter designations and where the objections are. And we're  
16 in the process of getting through that. Almost there in  
17 fact. But I've get it down in an order.

18 So I will conditionally admit in evidence the  
19 deposition designations and counter designations subject to  
20 ruling on objections. The depositions and counter  
21 designations are all shown in the joint pre-trial order which  
22 the Court entered. Okay?

23 MR. WEDDLE: Thank you, Your Honor. And the couple  
24 more that I think are even easier than that, which is to  
25 offer the joint exhibits into evidence. Those are listed in

1 the pre-trial order.

2 THE COURT: Where, which tab on the pre-trial order  
3 do I find those?

4 MR. KIRPALANI: I think that's at D for the pre-  
5 trial.

6 THE COURT: D?

7 MR. KIRPALANI: I'm sorry, Your Honor. The  
8 original order

9 THE COURT: Mr. Kirpalani, your view? No  
10 objection, right?

11 MR. KIRPALANI: Well, yeah, the joint exhibits, we  
12 have no objection, yeah.

13 THE COURT: Well, my only hesitancy, I am going to  
14 admit them. There are 100 exhibits listed on this joint  
15 exhibit list.

16 What I've usually found is that the parties over  
17 designate their exhibits, so I've got no pre-trial order, but  
18 in total, I haven't tried to count the number of pages, but  
19 it's huge.

20 And so, what -- in most cases, I'm usually  
21 reluctant to do that. You know, you want to -- if you refer  
22 to an exhibit and want to offer it, fine, it will come in.  
23 These are ones with no objection. But I usually find less  
24 than half of the exhibits that get pre-marked actually wind  
25 up coming into evidence. And there are an enormous number of

1 exhibits that each side has designated. This hundred on the  
2 joint list is a fairly small number.

3 I'll simply things by saying all right they will be  
4 admitted into evidence. I may come to regret it, but --  
5 because I feel compelled to review each and every exhibit  
6 that's admitted in evidence.

7 We shouldn't think that the same is going to apply  
8 when you start going through your exhibit lists, even if  
9 there are exhibits as to which there's no objection. I just  
10 -- because, you know, when you're preparing for trial you  
11 list everything you conceivably think you may want to use and  
12 I don't -- I don't let people just dump in every exhibit they  
13 conceivably think they may want to use, because I'm going to  
14 feel compelled before I rule to read every exhibit. Okay?

15 MR. WEDDLE: Thank you, Your Honor, that's very  
16 helpful guidance. And part of the reason that I'm doing  
17 this, Your Honor, at this time, of course, is that we're  
18 about to call a series of expert witnesses.

19 And of course it's not necessary for the documents  
20 that they rely on to be admitted into evidence under Rule 703  
21 and Your Honor's already indicated as much in your order.

22 THE COURT: With limits I did.

23 MR. WEDDLE: With limits of course. And so you  
24 know, that -- that's the issue, is the limits, Your Honor.  
25 And so that's why we think, as we put in our briefs, that the

1 reports have been -- the admissibility of the reports has  
2 been litigated, Your Honor's ruled on it. We're about to  
3 move to cross examination of Mr. Tuliano. So the parts of  
4 his report that Your Honor did not rule were excluded, we  
5 think we're ready to go --

6 THE COURT: Well, I wasn't going to make you go  
7 ahead and re-do your reports, okay? Because I think I can  
8 decide -- I've said -- I've set out the principles that I'm  
9 applying in deciding what was admissible and I said as to the  
10 rest, it will be disregarded.

11 I wasn't going to go through and give you a list of  
12 every page and line reference where that was the case. I've  
13 set out the principles that I'm applying.

14 If you're going to offer -- if you want the  
15 exhibits that your experts rely on, you're going to have to  
16 offer them. I'm not -- I'm not -- particularly because part  
17 of the objection from the Defendants was that there's  
18 inadmissible hearsay and while yes, experts are entitled to  
19 rely on certain hearsay, it's not an across the board ruling.

20 So you're going to have to move -- you can do it  
21 after you, you know -- what I prefer is before a witness gets  
22 off the stand, you've moved in evidence whatever -- whatever  
23 you move in evidence. If there are no objections, they'll  
24 come in at that point.

25 But particularly in light of the motion in limine



1 that was made with respect to the expert reports and the  
2 Court's ruling on it, I'm not simply going to say that every  
3 document that an expert listed in their report is coming into  
4 evidence. There they were -- you know, there's serious  
5 hearsay objections of things that don't go to expert opinion.  
6 Okay? That's --

7 MR. WEDDLE: That's completely understood, Your  
8 Honor. But with respect to, for example, the joint  
9 exhibits --

10 THE COURT: I've already said the joint exhibits  
11 are in, okay?

12 MR. WEDDLE: Right. And then in addition, Your  
13 Honor, there are -- I'm not going to -- I take Your Honor's  
14 guidance --

15 THE COURT: Can we just get on with the evidence?

16 MR. WEDDLE: We can, Your Honor.

17 THE COURT: Because I'm making clear I'm not  
18 admitting in evidence everything you have on your exhibit  
19 list. You're going to need to have to move it into evidence.  
20 If there no objections, it will in all likelihood come in,  
21 but I'm not -- you know, I'm not -- there are enormous  
22 exhibit lists in this case.

23 MR. WEDDLE: I understand that.

24 THE COURT: And I'm not just simply agreeing  
25 everything is in evidence, because I'm the one who's going to

1 bear the brunt of it at the end of the case when I've got to  
2 go through and make sure I've read every exhibit.

3 MR. WEDDLE: Thank you, Your Honor.

4 THE COURT: Let's get on with the evidence.

5 MR. WEDDLE: Thank you.

6 THE COURT: Who for the Plaintiff is going to call  
7 the first witness?

8 MR. POHL: Good afternoon, Your Honor. Steven Pohl  
9 for the Trustee. Our first expert witness is Ralph Tuliano,  
10 formerly of Mesirow, now with FEM Consulting.

11 THE COURT: Thank you. Mr. Tuliano, would you come  
12 up and be sworn? If you would raise your right hand to be  
13 sworn. If you would stand, that's right Thank you.

14 R A L P H T U L I A N O, PLAINTIFF'S WITNESS, SWORN

15 THE COURT: All right. Please have a seat. I saw  
16 you brought your own water up. There's water in the pitcher  
17 if you need.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you very much. Go ahead, Mr.  
20 Pohl.

21 MR. POHL: Your Honor, given that the method here  
22 is that the reports are in we'll tender them for cross, I'd  
23 like to just approach Mr. Tuliano. I have an agreement with  
24 Defense counsel to give him his four reports.

25 THE COURT: Absolutely.

1 THE WITNESS: Thank you.

2 THE COURT: Mr. Pohl, were they marked as exhibits?  
3 I want to make sure. I've got a lot of paper in here. How  
4 have -- how have they been identified? Do I have -- go ahead  
5 if you would, please.

6 MR. WERDER: I don't think the expert reports have  
7 been marked as exhibits, Your Honor. I think maybe the --

8 THE COURT: You had them attached to your motion in  
9 limine.

10 MR. WERDER: Yes. We do have. If the Court needs  
11 copies, I think we have some spare --

12 THE COURT: Yes, I would. Yeah, that would be  
13 great, Mr. Werder, I appreciate it.

14 MR. POHL: I think we had sent all of ours to  
15 chambers, all of our expert reports. At different --

16 THE COURT: I have a whole box of expert reports  
17 and the exhibits to the expert reports.

18 MR. POHL: Okay, I apologize, Your Honor.

19 THE COURT: All right. So the record is clear, the  
20 Tuliano -- how many reports are there, Mr. Pohl?

21 MR. POHL: There's four, Your Honor.

22 THE COURT: Okay. The four Tuliano reports are in  
23 evidence, except for those portions that have been ruled upon  
24 and excluded in the order -- in the opinion on the motion in  
25 limine.

1 MR. POHL: Understood.

2 THE COURT: All right. Thanks very much.

3 MR. POHL: With that we would tender out expert for  
4 cross.

5 THE COURT: Thank you very much. Mr. Werder.

6 MR. WERDER: Good afternoon, Your Honor, Rick  
7 Werder from Quinn Emanuel for the Defendants.

8 DIRECT EXAMINATION

9 BY MR. WERDER

10 Q Good afternoon, Mr. Tuliano.

11 A Good afternoon, Mr. Werder.

12 Q It's been a while.

13 A It has.

14 Q I think it was December of 2009. A long time.

15 A Good to see you again.

16 Q Thank you. For your work on this case you reviewed  
17 various projections, correct, sir?

18 A Yes.

19 Q And you -- in at least one of your work papers, you  
20 categorized those various projects into several different  
21 categories, correct?

22 A We differentiated between management base case  
23 projections and the various downside projections that were  
24 run.

25 Q Exactly. That was -- maybe my question was a little too

1 open ended, but you categorize certain projections as  
2 management projections, correct?

3 A There were management base case projections that were  
4 performed by the company and I -- it wasn't my  
5 classification, it was the company's classification that  
6 these were the management projections.

7 Q And in addition to management case projections, you also  
8 reviewed certain projections that were designated as base  
9 cases, correct?

10 A The management projections were designated, to my  
11 knowledge, as base case projections, but yes, there's  
12 different nomenclature that was used by different parties.

13 MR. WERDER: May I approach the witness, Your  
14 Honor.

15 THE COURT: Yes, please. Go ahead. Thank you.

16 MR. WERDER: Mark this for identification as  
17 Tuliano Cross Examination Exhibit #1.

18 (Tuliano Cross Examination Exhibit 1 was marked for  
19 identification)

20 BY MR. WERDER:

21 Q This is one of your work papers, correct, Mr. Tuliano?

22 A I'm sorry, it looks like it could be. Typically on my  
23 work papers there's a footer at the bottom that will say that  
24 our firm prepared it, but I'll take your representation.

25 Q All right. And so if you look over in the far left hand

1 column, you see a number of B's, W's, D's, CRT's --

2 A Yes.

3 Q -- and M's, correct?

4 A Yes, I do.

5 Q And B stands for base, correct?

6 A Yes.

7 Q And D stands for downside?

8 A I believe that's the case.

9 Q And M stands for management, correct?

10 A Yes.

11 Q And CRT stands for credit stress, is that right?

12 A Correct.

13 Q And W, which I think is the last category, stands for  
14 worst case, correct?

15 A Yes.

16 Q Okay. Now the projections that you reviewed for your  
17 work on this case were prepared by, among others, five  
18 different banks, correct?

19 A I believe that's correct. I'm just trying to recall if  
20 every bank had a set of projections, but --

21 Q But some number of different banks?

22 A Yes.

23 Q All right. And in addition to -- and you reviewed the  
24 banks' credit memos, did you not?

25 A Yes, I did.

1 Q And in the banks' credit memos, they generally discussed  
2 a management case and a base case and one or more downside  
3 cases, correct?

4 A Management memos varies in terms of their discussions  
5 and they vary over different points in time, so there's  
6 generally a discussion about the projections, some of which  
7 will have a discussion of the management case, some of which  
8 would have a discussion of downside cases, but I can't tell  
9 you as I sit here that every set looked at all three, given  
10 the nomenclature that is designated here.

11 Q Sure, there's a lot of paper. But if we look at what  
12 I've marked for identification as Tuliano Cross Examination  
13 Exhibit 1 and we look about mid way down the page, you see  
14 three Merrill Lynch July 15th, 2007 cases that you have  
15 reported there, correct?

16 A Yes.

17 Q And one of them is a management case, am I right?

18 A Yes.

19 Q And one of them is a base case and the last one is a  
20 downside case, correct?

21 A Yes.

22 Q And the management case was in fact higher than what  
23 Merrill was designating as the base case as of July 15th,  
24 correct?

25 A Yes.

1 Q And you found that commonly, did you not, that certain  
2 of the banks would have in their memos what they call the  
3 management case and then they would have a separate base  
4 case, correct?

5 A Yes. I think said another way the management case was  
6 the highest case of all of the projections that were  
7 evaluated and whether it was a base case or a downsize case,  
8 it was a variation to the downside with respect to the  
9 management case.

10 Q Well, my question to you, sir, was that in the bank  
11 credit memos that you reviewed, many of the banks had a  
12 management case reported and then they had a separate base  
13 case reported, am I right?

14 A Yes.

15 Q And in general, based upon your observation, the banks  
16 base cases were somewhat more conservative than the  
17 management case, correct?

18 A I don't think, sir, I'd agree that they're both  
19 conservative. I think that the base cases in those memos  
20 were somewhat lower than the management case, but I wouldn't  
21 characterize either of them as conservative.

22 Q Well, let me try it using your phrase then. The bank  
23 cases generally projected -- the bank base cases generally  
24 projected, over the projection period, somewhat lower EBITDA  
25 than the management case, correct?



1 A That is correct.

2 Q And those were the credit memos that were presented to  
3 the bank credit committees when approval was sought for this  
4 transaction, am I right?

5 A I believe those memos were prepared in terms of  
6 evaluating the credit and several of them were titled credit  
7 memos. I do not know specifically which of those were  
8 presented to which credit approval committee for which bank.

9 Q Okay. That's fine. But, sir, focusing on the bank base  
10 cases, every bank reported on every bank case that LBI would  
11 generate sufficient free cash flow to fund debt service and  
12 capital expenditures, correct?

13 A I'm sorry, sir. I do not know that. I have not gone  
14 through each base case and tested the cash flow. I will tell  
15 you that the cash flow within the management case was  
16 problematic for a number of reasons and therefore I would  
17 expect those problems would extend to the base case  
18 projections in terms on including or, in this case, the  
19 management case, not including material items that the  
20 company was aware of but did not include in the projections.

21 Q My question, sir, was that every bank reported under  
22 every bank base case the LBI would generate sufficient cash  
23 flow to fund debt service and capital expenditures, did they  
24 not?

25 A I have not tested each of those base cases. I test

1 downside cases in conjunction with the capital adequacy and  
2 what I'm telling you is because the management, which is the  
3 highest of all of these cases, had problems in terms of the  
4 cash flow that was projected and things not being included in  
5 that cash flow, then my conclusion would be, as I would  
6 expect, given the base cases that the banks had, were lower  
7 than the management case, that those cases would have the  
8 same problem as the management case.

9 THE COURT: I'm just looking at the Merrill Lynch  
10 July 15th, 07 -- I'm looking at the management case, base  
11 case, downside case, but for 2007 Merrill Lynch's base case  
12 was higher than management case.

13 MR. WERDER:: Well, in 2007 it may have been -- let  
14 me ask the witness a question about that.

15 BY MR. WERDER:

16 Q You looked at metric called mid-cycle EBITDA, correct,  
17 sir?

18 A Yes, that is one of the metric.

19 Q And that's the metric that's reported in the second last  
20 column on the right hand side of Exhibit Cross Examination 1,  
21 correct?

22 A Correct.

23 Q And if we look at the mid-cycle EBITDA or the July 15th  
24 management case, that is higher than for the July 15th base  
25 case, correct?

1 A I'm sorry, for Merrill Lynch?

2 Q Yes, for Merrill Lynch. It's 47.58 for the management  
3 case and 45.58 for the base case, correct?

4 A Correct.

5 Q And we'll talk a little bit more about that metric as we  
6 move forward, but you're understanding, if you look across  
7 the line of the Merrill base case versus the Merrill  
8 management case, the base case has lower projections than the  
9 management case, does it not, sir?

10 A Yes. Over the entirety of the period.

11 Q Okay. And you didn't independently test any of the  
12 assumptions underlying any of the either base cases or  
13 downside cases that's the banks reported in their credit  
14 memos, did you, sir?

15 A Well, I tested the downside cases. I selected three  
16 downside cases that --

17 THE COURT: You know it would really help if you  
18 listened to counsel's question.

19 THE WITNESS: Okay.

20 THE COURT: And answer the question that's asked  
21 and then if the Plaintiff's counsel wants to ask you  
22 additional questions, they can. But cross examination goes  
23 faster if you listen carefully to Mr. Werder's questions and  
24 answer that.

25 MR. WERDER: Thank you, Your Honor.

1 BY MR. WERDER:

2 Q You didn't independently test any of the assumptions  
3 underlying either the bank base cases or the bank downside  
4 cases, did you, sir?

5 A No, I accepted those projections.

6 Q Thank you. Now you've reported in your -- and we're  
7 going to focus principally I think this afternoon, on your  
8 opening in 2009 report which is the November 2009 report.

9 You reported in that report the results of various  
10 financial analyses that you performed, correct, sir?

11 A Yes.

12 Q And one of the tests that you reported results on was  
13 something that you called a cash flow adequacy test, correct?

14 A Correct.

15 Q And that cash flow adequacy test is an important of the  
16 analysis that you performed for purposes of forming your  
17 opinions in this case, is it not?

18 A Yes.

19 Q And your cash flow adequacy tests all start with  
20 projected EBITDA, am I right?

21 A Yes.

22 Q And focusing on the cash flow tests that you did -- that  
23 your reported in November of 2009 for the company as of  
24 December 2007, all of the projections that you used were  
25 labeled by the banks that created them either downside cases

1 or credit stress cases, correct?

2 A Correct.

3 Q Your report did not include the results of any cash flow  
4 tests done on any bank's base case, am I right?

5 A Yes.

6 Q And all of the base cases that all of the banks  
7 presented in the projections that you performed would have  
8 passed your cash flow adequacy test as of December 20th of  
9 2007, correct?

10 A I do not know.

11 Q You didn't perform that test?

12 A I did not test the base case, it was the purpose of the  
13 case flow adequacy test, it was to test in a downside,  
14 contemporaneous downside, whether the business plan would be  
15 able to function and fund itself, even if things did not go  
16 as planned as represented in the base cases.

17 Q All right. So is it your testimony, sir, that you  
18 can't, based on having performed the credit -- the cash flow  
19 adequacy tests that you performed, you can't know just by  
20 looking at those tests that the EBITDA projections in every  
21 single one of the bank's base cases would have passed that  
22 test?

23 A I can't tell without performing the test.

24 Q Okay. Maybe we'll look at a couple of them a little bit  
25 later. Now your exhibit -- your report, I think you said you

1 identified 36 different sets of projections, correct?

2 A That's correct.

3 Q And those are the projections and you have them charted  
4 in your report and we'll look at your chart momentarily. But  
5 the 36 sets of projections that you reported on in your  
6 report are the 36 sets of projections that are summarized on  
7 Exhibit Cross Examination 1, correct?

8 A I'm sorry, I don't know without going through. We  
9 actually looked at more than 36 sets of projections. There  
10 were more sets. We narrowed it down to 36. This very well  
11 could be the 36, but I'm sorry, I don't know whether these  
12 are the precise 36 that we looked at.

13 Q Well, you charted 36 cases at page 43 of your 2009  
14 report, did you not, sir?

15 A Yes.

16 Q And you provided backup for your chart, which I will  
17 represent to you -- page 44 actually, which I will represent  
18 to you is what is sitting in front of you as Exhibit Cross  
19 Examination 1. So --

20 A That's fine.

21 Q -- in any event, it's 36 cases, correct?

22 A Correct.

23 Q And the sets of projections that you discussed in your  
24 report, whether or not you looked at more and didn't discuss  
25 them, you discussed 36 different sets of projections,

1 correct?

2 A Yes.

3 Q And the projections that you chose for your various  
4 analysis, you picked from that group of 36 sets of  
5 projections, right?

6 A Yes.

7 Q Now 16 of the 36 sets of projections on your chart were  
8 prepared prior to July 15th of 2007, correct?

9 A That looks right.

10 Q Okay. And I'm right, am I not, that none of the  
11 projections that were prepared before July 15th of 2007 would  
12 have reflected any consideration of Lyondell's managements  
13 internal projections for the Lyondell business, correct?

14 A I believe July 15th was the first time. I think that's  
15 correct.

16 Q Okay. Those internal Lyondell projections were in fact  
17 not provided to Merrill Lynch, the banks, Access , Basell  
18 until shortly before July 15th, correct?

19 A Correct.

20 Q And so the projections that were prepared, the 16 sets  
21 of projections on your set of 36 that were prepared prior to  
22 July 15th of 2007 would not have reflected any consideration  
23 of Lyondell management's internal projections for its  
24 business, correct?

25 A Other than for the Houston Refinery, I think that's

1 correct. There was a data room that was set up for the  
2 Houston Refinery and, as I understand it, Basell had access  
3 to that data room and would have evaluated potentially  
4 purchasing that refinery, so they would have had access to  
5 that information, that predated this, but with that  
6 exception, you're correct.

7 Q Okay. And that was backed in 2006, correct?

8 A Correct.

9 Q And that was at the time when Lyondell was deciding  
10 whether or not to sell or keep the Houston Refinery, right?

11 A Correct.

12 Q And ultimately they bought out their business partner  
13 and increased their ownership in that refinery from 50  
14 percent approximately to 100 percent, correct?

15 A Correct.

16 Q And that changed the economics of the operation of the  
17 Houston Refinery from the perspective of the Lyondell  
18 Chemical Company, correct?

19 A Yes.

20 Q All right. Now, getting back to the chart, Exhibit  
21 Cross Examination 1, it's also true is it not that none of  
22 the projections that were prepared prior to July 15th  
23 reflected the final synergy estimates that management  
24 developed after the merger agreement, right?

25 A That's correct.



1 Q And the earliest projections that reflected or  
2 considered managements final synergy estimates were the ones  
3 that you refer to on your chart as the projections  
4 presentation 9/26/07, correct?

5 A I don't think that's correct.

6 Q Which projections do you believe were prepared before  
7 September 26, '07 that reflected the final synergy estimates,  
8 sir?

9 A I'm sorry, that's going the other way. I believe the  
10 November 29th -- there's a November set of projections that  
11 reflected some implementation costs for those synergies that  
12 were not reflected on that September.

13 Q Thank you, you're correct and let me rephrase my  
14 question. Before -- none of the projections that were  
15 prepared before November, are you saying, reflected  
16 management's final synergy estimates?

17 A That's -- I believe that's correct. As it pertains to  
18 those synergy estimates with implementation costs deducted  
19 from those synergy estimates.

20 Q And you're talking about the calculation that resulted  
21 in a projection of net synergies 55 million for 2008 or 45  
22 million after implementation costs, correct?

23 A That's correct.

24 Q The 420 million run rate synergies were estimated by  
25 management and first included in the 9/26/07 projection set

1 that's listed on your chart, correct?

2 A I believe that's correct.

3 Q Okay. Now the purposes of your cash flow adequacy test,  
4 and frankly for purposes of all of the financial tests that  
5 you reported in your report in November of 2009, you used  
6 three sets of projections, correct?

7 A I'm sorry, I think that's incorrect. Not for -- for the  
8 cash flow adequacy test, that's correct.

9 Q Well, we'll look at the other tests. Let me focus on  
10 the cash flow adequacy test for present purposes. For  
11 purposes of your cash flow adequacy test, you used the April  
12 10th Merrill Lynch credit stress case, correct?

13 A Yes.

14 Q And then you used a July 10th Merrill Lynch downside  
15 case, correct?

16 A Correct.

17 Q And you used a 7/15 -- July 15th Citi downside case,  
18 correct?

19 A Correct.

20 Q Now you refer to these three sets of projections in your  
21 report as contemporaneous down side projections, correct?

22 A Correct.

23 Q The Merrill Lynch credit stress case was prepared three  
24 months or more prior to the closing of the deal, correct?

25 A Well, three months prior to the signing of the merger

1 agreement, that's correct.

2 Q Prior to the signing of the merger agreement, three  
3 months in advance of that, correct?

4 A Correct.

5 Q And it was prepared six months in advance of the closing  
6 -- eight months in advance, I'm sorry, of the closing of the  
7 transaction, correct?

8 A Correct.

9 Q And the other two sets of projections that you used were  
10 all prepared six months prior to the closing, correct?

11 A That's correct.

12 Q Okay. And none of those --\

13 A I'm sorry, five months from July to December?

14 Q Let's say five and a half, I'll split it with you. But  
15 none of the projections, none of those three sets of  
16 projections that were downside and credit stress projections  
17 were built off of managements final base case, correct?

18 A They were built off the July 15th case, that's correct.

19 Q Okay. And the latest downside case on your chart is  
20 from Goldman's October 2nd credit memo, correct?

21 A When you say the latest downside case.

22 Q Well, if you look -- you have them organized  
23 chronologically on your chart, do you not?

24 A Yes.

25 Q And the latest down -- the latest D that I see is

1 Goldman Sachs' 10/2/07 downside case, I'm right about that,  
2 am I not?

3 A Yes.

4 Q Okay. And that was something that you pulled from  
5 Goldman Sachs' October 2nd 2007 credit memo, correct?

6 A Correct.

7 Q Did you review that memo, sir?

8 A Yes.

9 Q All right. Do you like paper or electronic for purposes  
10 of exhibits?

11 A Either is fine. Whatever is easier for you.

12 Q Well, why don't I give you -- I 'll give you a set of  
13 paper. We're going to show them -- the paper is a little  
14 long.

15 MR. WERDER: May I approach, Your Honor.

16 THE COURT: Yes, please. Just for everybody's  
17 benefit, you don't to ask permission to approach the witness  
18 if you're bringing him documents or if you approach the  
19 witness to show the witness something, you can do that.  
20 Opposing counsel, if they wish, may approach as well. Thank  
21 you.

22 BY MR. WERDER:

23 Q I want to direct your attention, sir, I'm going to  
24 put it on the screen. You can look at it in the binder if  
25 you want as well. But Defendant's Exhibit 180. And that is

1 in fact the October 2nd, 2007 Goldman Sachs' memo from which  
2 you drew the projections that we just looked at on your  
3 chart, correct?

4 A Correct.

5 Q And in that memo, which was prepared in October,  
6 Lyondell's under performance for the second and third  
7 quarters was among the topic that Goldman discussed, correct,  
8 sir?

9 A Yes.

10 Q And Goldman presented a downside case in those -- in  
11 that memorandum that it described as a severe downside case,  
12 correct? Okay, so why don't we show that up on the screen?

13 A Yes.

14 Q And they reported that trough EBITDA in their downside  
15 case reflected about a 40 percent drop from the levels in  
16 2007, correct, sir?

17 A I'm sorry, I'm not seeing where you're pulling that  
18 from. Correct.

19 Q Okay, thank you. Now the downside case is presented at  
20 page 23 of their credit memo, am I right?

21 A Yes.

22 Q And we'll talk a little bit more about the mechanics of  
23 your cash flow adequacy test later, but you didn't report the  
24 results of running your cash flow adequacy case on the  
25 downside case projections in Goldman's October 2nd credit

1 memo, did you sir?

2 A No.

3 MR. WERDER: Mark this for identification as  
4 Tuliano Cross Examination Exhibit 2.

5 (Tuliano Cross Examination Exhibit 2 was marked for  
6 identification)

7 BY MR. WERDER:

8 Q You recognize the format of this document, do you not,  
9 sir?

10 A Yes.

11 Q This is the format that you used to report the capital  
12 adequacy or cash flow adequacy tests that you reported in  
13 tables three through five of your 2009 report, correct?

14 A Yes.

15 Q And just a couple of questions about how you prepared  
16 that analysis. First of all you started with EBITDA  
17 projections that you drew from one or more sets of  
18 projections, correct?

19 A Correct.

20 Q And you calculated expenditures, anticipated  
21 expenditures for debt service and capital expenditures based  
22 on the final capital structure of the company, correct?

23 A That is true with respect to interest. Capital  
24 expenditures we took from the case.

25 Q If I said capital expenditures, I apologize. With

1 respect to interest and debt service, you calculated  
2 anticipated expenditure numbers based on the final capital  
3 structure of the company, correct?

4 A I believe that's correct.

5 Q Okay. And the number that you reported for capital  
6 expenditures in tables three through five of your 2009  
7 report, those capital expenditures were ones that you drew  
8 off of the particular downside case that you were analyzing,  
9 correct?

10 A Correct.

11 Q And then what you did was to compare the various  
12 expenditure numbers to the -- and you made one other  
13 adjustment. Withdrawn, you made one other adjustment, did  
14 you not, sir?

15 A Yes.

16 Q You adjusted for the Bear (phonetic) and Solvay  
17 acquisitions?

18 A Correct.

19 Q Correct? And then you reported the cash flow net of the  
20 interest capital expenditures and debt repayment, right?

21 A Correct.

22 Q And, sir, do you have any doubt that using Goldman  
23 Sachs' October 2007 downside case and your very analysis  
24 shows a cumulative total surplus and a surplus in every year?

25 A Well, I'm sorry, it shows a deficit in 2010. It shows

1 roughly a very slight positive in 2011. It shows a little  
2 bit more positive in 2012. And the debt to EBITDA ratios  
3 were quite high with respect to this.

4 Q The cumulative totals are positive across the board, are  
5 they not, sir?

6 A Yes.

7 Q And the surplus or the -- I guess I call it surplus, the  
8 cumulative total that's built up over the five year period is  
9 almost \$1.5 billion, correct, sir?

10 A Assuming no early debt amortization, that would be  
11 correct.

12 Q And you didn't assume any early debt amortization other  
13 than the debt repayment line in any of your cash flow  
14 analysis, did you, sir?

15 A No.

16 Q Okay. So this chart is apples to apples with tables  
17 three to five of your November 2009 report, correct?

18 A It looks right.

19 Q And what it shows is that over the five year period,  
20 using what Goldman characterized as a severe downside case  
21 and the latest case on your chart, your cash flow adequacy  
22 test is passed, correct, sir?

23 A It shows positive cumulative cash flow. I would want to  
24 evaluate this in the context of the other projections that  
25 were prepared whether this reflects a true downside scenario



1 as opposed to potentially Goldman's view. The capital  
2 expenditures here are extremely low and lower than amounts  
3 people have listed in terms of Mr. Trout's has mentioned an  
4 \$800 million number for regulatory and safety purposes.

5 So I would want to evaluate the test in the context.  
6 But to answer -- it's positive, if that's your question.

7 Q Well, that's what your cash flow adequacy test was  
8 attempting to show, correct? Whether the number was positive  
9 or negative?

10 A I'm sorry, sir, but --

11 Q Can you answer that yes or no?

12 A I can't.

13 Q Withdrawn.

14 A I'm sorry. No, I'll say no.

15 Q Thank you, sir.

16 Q The chart also includes an ABN AMRO downside case, does  
17 it not, sir?

18 A Yes.

19 Q And that ABN AMRO case was taken from a July 21st ABN  
20 AMRO credit memo, correct?

21 A Yes.

22 Q And you don't report the results of any of your tests  
23 using that downside case either, do you, sir?

24 A No.

25 Q Do you have any doubt that it would pass, sir?

1 A Based on this, I think the numbers would be positive.

2 Q Thank you, sir. Now, let's go back if we could to  
3 Tuliano Cross Examination Exhibit 1. And I started to ask  
4 you about this a little bit earlier, but one of the pieces of  
5 data that you show on your chart is mid-cycle EBITDA,  
6 correct?

7 A Correct.

8 Q And mid-cycle EBITDA is defined as the average EBITDA  
9 over a presumed peak to trough cycle, correct?

10 A Correct.

11 Q And mid-cycle EBITDA is a standard metric that used for  
12 evaluating projections and results of a cyclical company like  
13 Lyondell Basell, correct?

14 A Correct.

15 Q And you used the mid-cycle EBITDA metric to evaluate the  
16 various sets of projections that you studied, correct, sir?

17 A Correct.

18 Q And if we look at figure six of your November 2009  
19 report, that is a chart that you presented in your report  
20 that contains the results or contains a line graph that shows  
21 all 36 sets of --

22 MR. WERDER: It's on page 44, Your Honor.

23 THE COURT: Of which of these?

24 MR. WERDER: Of the November 2009, they're not  
25 dated on the cover evidently.

1 THE COURT: No. Hold on.

2 MR. WERDER: It's November 7th, 2009.

3 THE WITNESS: It should be the thickest report,  
4 Your Honor.

5 THE COURT: Okay. And where on the thickest report  
6 am I going to go?

7 MR. WERDER: On page 44.

8 THE COURT: Okay. Just hold on. Okay, I'm there.

9 MR. WERDER: Very good. Thank you, Your Honor.

10 BY MR. WERDER:

11 Q So on figure six you have graphed the 36 sets of  
12 projections that are the subject of your review, correct,  
13 sir?

14 A Correct.

15 Q And you don't show it on your chart, but in point of  
16 fact the three sets of projections that you use rank very low  
17 on the chart, don't they, sir?

18 A They are in the bottom 40 percent.

19 Q All right.

20 MR. WERDER: Mark this for identification as  
21 Tuliano Cross Examination Exhibit 3.

22 (Tuliano Cross Examination Exhibit 3 is marked for  
23 identification)

24 BY MR. WERDER:

25 Q My graphics aren't quite as good as Mr. Kirpalani's from

1 this morning, but the -- you say, how did you characterize  
2 them, in the bottom what?

3 A 40 percent.

4 Q Bottom 40 percent.

5 A Uh-huh.

6 Q Okay, well, the -- two of them -- one of them is almost  
7 the lowest of the low, isn't it, sir?

8 A That's the credit stress test.

9 Q Okay. That's worse than in the bottom third or 40  
10 percent, correct, sir?

11 A I'm saying as a group, but yes.

12 Q Okay.

13 MR. WERDER: Yours is the red lines, correct?

14 THE WITNESS: Correct.

15 BY MR. WERDER:

16 Q All right. So if we focus on the Merrill April 10th,  
17 2007 credit stress case, that has almost the lowest projected  
18 EBITDA of all 36 sets of projections that you reviewed,  
19 correct, sir?

20 A Yes.

21 Q And you calculated the mid-cycle EBITDA for that  
22 particular projection at 2788 million or 2.788 billion,  
23 correct, sir?

24 A Correct.

25 Q And there were only, by my count, three lower

1 projections out of the 36 based on mid-cycle EBITDA, do you  
2 agree with that, sir?

3 A That sounds right.

4 Q Okay. The Merrill Lynch March 7 worse case; the Merrill  
5 Lynch 3/29, March 29th worse case and the Merrill Lynch 4/1  
6 worse case. Those are the only three sets of projections out  
7 of all 36 that are -- that project lower EBITDA than the  
8 Merrill Lynch credit stress case that was subject of your  
9 analysis, correct, sir?

10 A Yes.

11 Q And the three lower cases, as we just pointed out, were  
12 all labeled worst cases, correct?

13 A Yes.

14 Q and they were all prepared even earlier in time than the  
15 April 10th credit stress case, correct?

16 A Yes.

17 Q Okay. Now of the 20 sets of projections that were  
18 prepared on or after July 15th, the Citi downside case is the  
19 lowest one on the chart, isn't it, sir?

20 A So you're saying of the ones, the subsequent cases?

21 Q Of all cases prepared on or after July 15th, the Citi  
22 Downside case that you used for your analysis is the lowest  
23 of the low, correct?

24 A Correct.

25 Q And the next lowest is what Merrill Lynch prepared that

1 they labeled an extreme worst case, correct?

2 A Yes.

3 Q All right. And in terms of mid-cycle EBITDA, the mid-  
4 cycle EBITDA that you calculated for the Citi case was 3526  
5 million, correct, sir?

6 A I'm sorry. I see a lower -- on the Citibank downside  
7 case it's 3286.

8 Q Yes, you're right. And I was mis-reading my notes. The  
9 3526 is the Citi downside case -- 3286 million is the Citi  
10 downside case, correct?

11 A Correct.

12 Q And that's the lowest in terms of mid-cycle EBITDA of  
13 any set of projections prepared on or after July 15th,  
14 correct?

15 A Yes.

16 Q Okay. And the next lowest case is the -- is the 3526 in  
17 the Merrill Lynch extreme worse case analysis, correct?

18 A I'm sorry, I'm having trouble lining it up, but yes,  
19 that looks right.

20 Q Okay. Now -- and with respect to the July 10th Merrill  
21 Lynch downside case, that one has the second lowest mid-cycle  
22 EBITDA of any set of projections prepared in July or later,  
23 correct, sir?

24 A That looks right.

25 Q Okay. And the -- I know you didn't report this, but

1 will you trust my match and that the average mid-cycle EBITDA  
2 for the 36 sets of projections that you reviewed is 3864  
3 million?

4 A I'll take your word for it.

5 MR. WERDER: I'll label this for identification as  
6 Tuliano Cross Examination Exhibit 4.

7 (Tuliano Cross Examination Exhibit 4 was marked for  
8 identification)

9 BY MR. WERDER:

10 Q The downside cases that you reviewed are all, in terms  
11 of mid-cycle EBITDA, are hundreds of millions of dollars  
12 below the average of all 36 cases, are they not, sir?

13 A Yes.

14 Q The closest that any one of them comes is approximately  
15 \$400 million, correct, sir? \$300 million. No, \$400 million.  
16 I'm sorry.

17 A You're comparing the Merrill Lynch 7/10/07?

18 Q Yes, comparing the Merrill Lynch 7/10/07 to the average  
19 of all 36 cases, the gap is approximately \$400 million,  
20 correct, sir?

21 A Yes.

22 Q And comparing any of the sets to the average of the 20  
23 sets of projections prepared on July 15th or later, there's  
24 an enormous gap, is there not, sir?

25 A It looks approximately 800 million.

1 Q Okay. And comparing, assuming again that our math is  
2 right, which I think it is, since it's been checked about 100  
3 times, the average of the seven downside cases prepared on  
4 July 15th or later is 3705 million, correct, sir?

5 A Yes.

6 Q And that is hundreds of millions or dollars higher than  
7 any of the three sets of projections that you used, correct,  
8 sir?

9 A That's 240 million.

10 Q Okay. You got the results that you got by picking the  
11 lowest of the low projections, did you not, sir?

12 A I don't agree with that.

13 Q Well, you're not holding yourself out as a -- withdrawn.  
14 Do you know, sir, whether projections that matched the  
15 average EBITDA, the average mid-cycle EBITDA would pass your  
16 cash flow test? They would, wouldn't they?

17 A Result in a -- it looks like it would result in a  
18 positive number of all of the projections, not necessarily  
19 all the downsides.

20 Q Okay. And positive number means passing your test as  
21 you presented it, correct?

22 A The test is designed to test downside projections. It's  
23 not a test of the base case projections.

24 Q Now you're not holding yourself out as a petrochemical  
25 or refining expert, are you sir?



1 A No, I'm not.

2 Q You're not an expert on preparing projections for  
3 petrochemical or refining companies, are you?

4 A Not for petrochemical or refining companies. I have  
5 substantial expertise in financial projections.

6 Q Okay. And you're not an expert in the kinds of  
7 synergies that can reasonably be expected to be achieved in a  
8 merger of petrochemical or refining companies, are you?

9 A No.

10 Q Okay. And you learned as part of your work on the case  
11 that after the merger agreement was signed, Basell's  
12 management got together with Lyondell's management and worked  
13 on potential synergies, correct?

14 A Yes.

15 Q And you're not offering any opinion, are you, as to  
16 whether any or all of the potential synergies that they  
17 identified were attainable?

18 A I believe that I am.

19 Q You're -- you're offering opinions with respect to the  
20 projections as a whole, not with respect to line by line  
21 analysis of the synergy component of those projections,  
22 correct, sir?

23 A Correct.

24 Q So you're not offering -- you haven't looked at the line  
25 items of the synergies that were identified and formed

1 opinions on which ones of those you believe were reasonably  
2 attainable and which ones weren't, did you?

3 A No, I did not.

4 Q Okay. You looked at the projections as a whole in which  
5 the synergies were included and you've offered some opinions  
6 with respect to that, correct?

7 A Correct.

8 Q Now, you've relied on CMAI's litigation report to inform  
9 your opinions about LBI's management projections, have you  
10 not?

11 A In part, correct.

12 Q And the industry views of CMAI that you relied on were  
13 the ones that they set forth in their 2009 litigation report,  
14 correct?

15 A In part, yes.

16 Q You didn't go back and compare what CMAI said in it's  
17 2009 litigation report to what CMAI was saying in 2007, did  
18 you, sir?

19 A I did. I did to that. I did to that.

20 Q You did do that?

21 A I'm sorry, that's incorrect.

22 Q Okay.

23 MR. WERDER: December deposition.

24 BY MR. WERDER:

25 Q I'm going to direct your attention, sir, to 147 and 148

1 of your December 2009.

2 A Yes.

3 Q And you're asked a question starting at line 19 on page  
4 37 (sic):

5 "Q I'm just asking about the synergies."

6 Answer:

7 "And I believe with respect I haven't formed an opinion  
8 with respect to each specific component of the projections.  
9 I've looked at the projections as a whole and have formed my  
10 opinion with respect to those projections."

11 Correct? That was your testimony, correct, sir?

12 A Yes.

13 Q Okay. And in terms of your contention that the downside  
14 and credit stress cases that you used and reasonably  
15 considered to be base cases rather than downside cases, you  
16 relied on CMAI, correct?

17 A That is correct.

18 Q Let's talk about the April 10, 2007 credit stress case.  
19 Merrill -- did you review the testimony of Gunter Frankenberg  
20 of Merrill Lynch?

21 A It's been some time, but yes.

22 Q All right. And Mr. Frankenberg testified that the  
23 credit stress test case was an extreme downside case,  
24 correct, sir?

25 A I believe that's correct.

1 Q And he was one of the bankers who was involved in  
2 preparing those projections, wasn't he, sir?

3 A Yes.

4 Q And he also testified that he didn't think that that was  
5 a realistic case, didn't he, sir?

6 A I don't recall.

7 MR. WERDER: Let's take a look if we could. Let's  
8 just -- can we pop up the screen, Jason, Mr. Frankenberg's  
9 2009 declaration, paragraph 43.

10 BY MR. WERDER:

11 Q And he has testified that Chemicals Group at Merrill  
12 Lynch almost never runs extreme downside cases at site levels  
13 and he did not believe that this scenario was realistic.  
14 That was his testimony, correct, sir?

15 A I see that, yes.

16 Q And he also testified that, as one of the people who  
17 prepared the case, that he didn't think it was reasonable or  
18 foreseeable, correct, sir?

19 A I'm sorry. What portion of the testimony --

20 Q The portion of the case that is highlighted for us.

21 "We do not believe that's the worst case scenario --"

22 A Oh, I see, thank you.

23 Q "We did not believe that a credit stress test case was  
24 reasonable or foreseeable."

25 Do you see that?

1 A Yes.

2 Q And in fact he testified, if we go to paragraph 41, that  
3 they didn't view it as remotely likely, correct, sir?

4 A Yes.

5 Q And Mr. Melvani from Merrill Lynch offered similar  
6 testimony concerning the credit stress case, am I right?

7 A That may be right, I don't recall specifically his  
8 testimony.

9 Q Okay, did you --

10 THE COURT: Did you review their testimony?

11 THE WITNESS: I do. I did, some of these it's been  
12 some time though.

13 THE COURT: I understand.

14 MR. WERDER: We won't put that up, we'll just show  
15 Mr. Melvani's testimony later in the case.

16 BY MR. WERDER:

17 Q You also used the July 10th Merrill Lynch downside case,  
18 correct?

19 A Yes.

20 Q And when you used that case, you knew that it was  
21 prepared prior to the time that Merrill Lynch had access to  
22 Lyondell's internal projections, correct, sir?

23 A Yes.

24 Q And you knew that five days after they prepared that  
25 case, Merrill Lynch presented revised management, base and

1 downside cases to Access and Basell that took advantage of or  
2 considered the information about Lyondell that had been  
3 received in the interim, correct, sir?

4 A Yes.

5 Q And you didn't use in your analysis Merrill Lynch's  
6 updated base case, did you base case, did you, sir?

7 A I did not. I used the Citi case at that point in time.

8 Q Okay.

9 A The Citi downside. That would reflect the updated  
10 information.

11 Q You didn't use -- we'll talk about the Citi downside  
12 case in a moment, but you didn't use the July 15th Merrill  
13 Lynch downside case, did you, sir?

14 A No.

15 Q And that case would pass your cash flow adequacy test,  
16 wouldn't it, sir?

17 A I'm sorry, I can't tell without running the case.

18 Q Okay. Very good. Maybe we'll look at it a little bit  
19 later. But let me just ask you a couple of questions about  
20 both the July 10th and the July 15th Merrill Lynch cases.

21 And one of those questions is that neither of those sets  
22 of projections included the full projected synergies that  
23 management expected to attain from this merger after doing  
24 the work that we previously discussed in the fall of 2007,  
25 correct, sir?

1 A I believe that's correct.

2 Q Both of those Merrill cases used a \$200 million a year  
3 assumption for synergies, which was the assumption that  
4 Merrill was using in the July time frame, correct, sir?

5 A I believe that's correct, but it also doesn't reflect  
6 the implementation costs either.

7 Q Yeah. So 200 million a year over five years is a  
8 billion total, correct, sir?

9 A That's correct, without the implementation costs.

10 Q Right. And then when the final estimates were done,  
11 after the work that Lyondell and Basell did together, they  
12 projected 45 million for 2008, 300 million for 2009 and 420  
13 million for each of 2010 through 2012, correct?

14 THE COURT: That's for synergies?

15 MR. WERDER: Yes, Your Honor.

16 THE WITNESS: I'm sorry, say the last three numbers  
17 again.

18 BY MR. WERDER:

19 Q Yes. 420 million for each of 2010, '11 and '12.

20 A That sounds right.

21 Q And the 45 million and the 300 million reflect, in 2008  
22 and 2009, reflected implementation costs in 2008 and a build  
23 up to the full synergies in 2009, correct, sir?

24 A I believe the full synergies in 2010.

25 Q Right. And it was short of the full synergies by 120

1 million in 2009, because they assumed they wouldn't get to  
2 the full number until 2010, right?

3 A Correct.

4 Q Okay. Now let's discuss the July 15th Citi downside  
5 case. That case was presented in Citi's credit committee  
6 approval memo on July 15th, correct?

7 A Yes.

8 Q And it was one of four sets of projections included in  
9 that memorandum, wasn't it, sir?

10 A I don't recall the number of sets, but I'll accept your  
11 representation on that.

12 Q Okay. And it projected by far the lowest EBITDA of any  
13 of the four sets of projections in Citi's memo, correct?

14 A Correct

15 Q And it wouldn't surprise you to learn, would it, that  
16 the next lowest projection in that memorandum projected more  
17 than 5 billion more of additional EBITDA over the period 2008  
18 through 2012, correct?

19 A Yeah, the difference being the downside versus a base  
20 case, yes.

21 Q All right. But it wouldn't surprise you that that gap  
22 was five billion over the period 2008 to 2012, would it, sir?

23 A No.

24 Q All right. And if your cash flow test was done on any  
25 of the other three cases, you'd show a positive number,



1 wouldn't you, sir?

2 A Yes.

3 Q All right. Now Citi witness Rob Jeffries testified  
4 concerning Citi's projections, did he not?

5 A Yes.

6 Q And you reviewed his testimony, didn't you?

7 A Yes.

8 Q And he was involved in preparing the projections, wasn't  
9 he?

10 A Yes.

11 Q And he testified that the base case reflected Citi's own  
12 view based on its due diligence and knowledge of the industry  
13 as to the most accurate forecast of the company's future  
14 performance, didn't he, sir?

15 A I'm sorry, could you repeat that?

16 MR. WERDER: Can we have Mr. Jeffries' declaration?  
17 This is Mr. Jeffries December 2009 declaration, paragraph 23.

18 BY MR. WERDER:

19 Q And he testified that the base case reflected Citi's own  
20 view, based on its due diligence and knowledge of the  
21 industry as to the most accurate forecast of the company's  
22 future performance, correct, sir?

23 A Yes.

24 Q And if we look at paragraph 24, he described the  
25 downside case as a stress test developed by Citi to determine

1       how the merged company would perform under severe economic  
2       conditions, including conditions that would result in  
3       breakage of financial covenants. That was his testimony,  
4       correct, sir?

5       A     Yes.

6       Q     And paragraph 24, he also testified that the downside  
7       case was not designed to be a realistic assessment of  
8       conditions LBI was likely to face, didn't he, sir?

9       A     Yes.

10      Q     And he testified that in fact the stress conditions  
11      reflected in the downside case were considered highly  
12      unlikely to occur, correct?

13      A     Yes.

14      Q     You didn't run --

15               MR. WERDER: We can take that down, Jason.

16      BY MR. WERDER:

17      Q     You didn't run any of your tests of LBI's financial  
18      condition on any sets of projections, any of the company's  
19      projections developed after July 15th, correct, sir?

20      A     (No verbal response)

21               THE COURT: I'm sorry, couldn't hear you.

22               THE WITNESS: I'm sorry. Correct.

23      BY MR. WERDER:

24      Q     And there were in fact later projections, weren't there,  
25      sir?

1 A There was a revision of the management case and  
2 projections that was minor and then there were some  
3 projections, I think as you see on the list that you have  
4 here. We focused on the management projections as of July  
5 15th. Our revisions afterwards were really into the  
6 synergies.

7 Q And you reviewed -- among the documents that you  
8 reviewed as part of your work on this case was a November  
9 2007 private supplement for the ABL facility, correct, sir?

10 A Yes.

11 Q And that was a document that was provided by the five  
12 arranging banks to potential investors, correct?

13 A Correct.

14 Q And you in fact relied on that for certain aspects of  
15 your 2009 report, correct?

16 A Yes.

17 Q And that set of projections included the synergy  
18 estimates of 45 million for 2008, 300 million for '09 and 420  
19 for 2010 to '12, correct, sir?

20 A Yes.

21 Q That was the estimate that the management teams had  
22 developed once they got to know each other and once they sat  
23 down and worked together, correct?

24 A Yes.

25 Q You didn't run any of your tests of the projections on

1 either the cases reported in the private supplement or on any  
2 downside case developed off of those projections, did you,  
3 sir?

4 A That's correct.

5 Q So to the extent that the November private supplement  
6 reflects the final management projections, there wasn't any  
7 downside case that you had available to you or that you  
8 developed on your own or that somebody else on your team  
9 developed that reflected a downside case off the final  
10 management case, correct, sir?

11 A Correct, but with an explanation, if I could. May I,  
12 Your Honor?

13 Q Sure.

14 THE COURT: Go ahead.

15 THE WITNESS: It's just the only changes,  
16 subsequent to the original management case, related to the  
17 synergies and I was endeavoring to test downside cases and  
18 synergies are notoriously suspect in terms of deals that are  
19 put together, so a downside you would expect that the  
20 synergies would be suspect.

21 There were no other changes other than to 2007,  
22 which was not part of the ultimate testing. The testing  
23 started in 2008, so the projections subsequent to that date,  
24 lower 2007 and added the synergies and those were the  
25 changes.

1 BY MR. WERDER:

2 Q Well, maybe we'll look at those projections in a  
3 little bit more detail.

4 THE COURT: You said the synergies are --

5 THE WITNESS: Suspect.

6 THE COURT: -- suspect?

7 THE WITNESS: Yes.

8 THE COURT: Did you include synergies at a lower  
9 level than lower amounts than the company projected or did  
10 you take them out?

11 THE WITNESS: We took them out.

12 THE COURT: So your assumption was no synergies  
13 whatsoever?

14 THE WITNESS: In a downside scenario, the  
15 assumption is that companies that are put together over the  
16 size many times do not realize synergies. Realize increased  
17 cost, there's only 45 million in the first year that was  
18 budget.

19 THE COURT: But the 400 million, so--

20 THE WITNESS: Well, it's 45 in the first year,  
21 because it's net of implementation costs. Then it ramped up  
22 to 100 million and then 400 after that.

23 THE COURT: As your next question.

24 BY MR. WERDER:

25 Q Well, the banks included some synergies in their

1 downside cases, did they not, sir?

2 A I'd have to look at each of the downside cases.

3 Q All right. And I think you testified a few moments ago  
4 that you're not an expert in synergies in the petrochemical  
5 and refining industry, are you, sir?

6 A No, I'm not.

7 Q And you didn't look at the line items that management  
8 was projecting that it could obtain through synergies, you  
9 just threw them out based on what you just described to His  
10 Honor?

11 A Yes.

12 Q Now each of the banks had credit approval processes, did  
13 they not?

14 A Yes.

15 Q And each of those banks had their own credit approval  
16 process, didn't they sir?

17 A Yes.

18 Q And you've reviewed the documentation that relates to  
19 the credit approval process and you've also reviewed  
20 testimony from the bank witnesses describing that process,  
21 haven't you, sir?

22 A Yes.

23 Q And one of the things that the process included was  
24 senior bank executives who weren't involved in the deal,  
25 correct?

1 A Yes.

2 Q And each of these banks was well versed in the industry,  
3 wasn't it, sir?

4 A The banks had industry people within their respective  
5 groups.

6 Q Okay. And each of the banks was well aware of economic  
7 conditions and expectations, correct?

8 A Yes.

9 Q And each of the banks was well aware and very familiar  
10 with the cyclicalality of the petrochemical and refining  
11 industries, weren't they, sir?

12 A Yes. Yes.

13 Q Thank you. Sorry, if I didn't hear you. And each, I  
14 think you've already testified to this, but each bank had  
15 access to the views of its own industry consultants, correct?

16 A Yes.

17 Q And they had access to outside experts and consultants  
18 as well, correct?

19 A Yes.

20 Q And each of those banks had the opportunity to consider  
21 management's projections and form views about what they felt  
22 about them, didn't they, sir?

23 A Yes.

24 Q And each of those banks also had the opportunity to  
25 develop their own base cases that accepted, to more or less

1 degree at their choosing, what they wanted to accept of  
2 management's management case, correct?

3 A Yes.

4 Q None of the banks reported in 2007, did they, sir, that  
5 they felt that management's projections were inconsistent  
6 with the known cyclicalality or volatility of the refining and  
7 petrochemical industries, correct?

8 A I believe throughout there were commentary within those  
9 memos as to concerns with respect to the cycle was at the  
10 peak and where the company was, but then the memos also  
11 offered some counterbalancing factors as well. So these  
12 memos had risk factors, then they also had counterbalancing  
13 factors in the bank's consideration.

14 Q Understood, sir, but the specific question was none of  
15 the banks reported in 2007 that they had concluded, based on  
16 their knowledge of cyclicalality and volatility, etcetera that  
17 they felt that management's projections were inconsistent  
18 with the known cyclicalality or volatility of the industries,  
19 correct?

20 A Correct.

21 Q And we mentioned CMAI. And you believe that CMAI is an  
22 authoritative source that the company should have considered  
23 in 2007, do you not, sir?

24 A Yes. And I think they had CMAI do some work as we  
25 discussed.



1 Q And CMAI in fact prepared a report for the banks in  
2 November of 2007, correct?

3 A Yes.

4 Q And you've reviewed that report, have you not?

5 A I have.

6 Q And that report did not state that the projections were  
7 unreasonable, did they, sir?

8 A That's correct.

9 Q And that report did not state that the company's  
10 projections were somehow inconsistent with the known  
11 cyclicalality or volatility of the refining and petrochemical  
12 industries, correct?

13 A Yes.

14 Q Basell and Lyondell also both had professional staffs  
15 that were very experienced in preparing projections for their  
16 business, correct, sir?

17 A I believe that's the case.

18 Q All right. And the Citi credit memo that you reviewed  
19 concerning Basell reported, among other things, that Basell  
20 had a very good track record for meeting its projections, did  
21 it not, sir?

22 A I don't recall that specific statement. If you want to  
23 show it to me.

24 Q Yeah, let's take a look if you would at Exhibit DX-130,  
25 which is your book or we'll show it.

1 MR. WERDER: Jason, show it up on the screen if you  
2 would.

3 BY MR. WERDER:

4 Q And we're looking at page 40 of the memo. Belgian is  
5 the code name that was used for Basell, correct, sir?

6 A Correct.

7 Q And Citi's evaluation of Basell said Basell has  
8 consistently delivered on its financial plans from the time  
9 of its acquisition by Access, correct?

10 A Yes.

11 Q And they characterize in A of that discussion Basell's  
12 management projections, conservative and delivering, correct,  
13 sir?

14 A Yes.

15 Q Now in deposition I asked you about Basell's projections  
16 on a standalone basis -- well, withdrawn. You didn't  
17 investigate, did you, sir, sufficiently to opine in 2009 that  
18 Basell's projections, separate and apart from Lyondell's  
19 projections, were unreasonable, correct?

20 A Correct.

21 Q And your opinions in 2009, which are still your opinions  
22 today, are based on the projections as a whole as opposed to  
23 some conclusion that Basell's projections were unreasonable,  
24 correct?

25 A Correct.

1 Q Now in part of your -- let me direct your attention if I  
2 could to page 49 and 50 of your first 2009 report. Are you  
3 with me, sir?

4 A I'm getting there.

5 Q Okay.

6 A Yes.

7 Q And one of the things that you're discussing under  
8 heading two there is failure to properly consider the  
9 volatile nature of in stock costs?

10 A Yes.

11 Q And then if we go over -- well, if you start at the  
12 bottom of the page there, you refer to a November 2006  
13 presentation to the supervisory board. Are you with me?

14 A Yes.

15 Q Okay. And you reviewed that November 2006 presentation,  
16 did you not?

17 A Yes.

18 Q And you cited in your report certain things that --  
19 certain conclusions that you drew from it including you  
20 state: "Basell quantified the impact of 33 percent increase  
21 in oil prices." Correct?

22 A Yes.

23 Q In fact the document on which you rely says the impact  
24 is up to that level, correct, sir?

25 A That could be, yeah.

1 Q Okay. And the document --

2 MR. WERDER: Let's take a look at JX-04, Jason.

3 Thank you.

4 BY MR. WERDER:

5 Q This is the Basell business plan that you're citing at  
6 pages 49 and 50 of your report, correct, sir?

7 A Yes.

8 Q Okay. And if we go to page 14, that's the place in the  
9 document from which you drew the conclusions, right?

10 A I believe that's right.

11 Q And this is under a discussion of plan sensitivity, is  
12 it not?

13 A Yes.

14 Q And it indicates that the impact is up to the level that  
15 you cite, correct, sir?

16 A Correct.

17 Q And it also indicates if we move up on the page to the  
18 discussion of the sensitivities, that these sensitivities do  
19 not take into account any additional measures to be taken in  
20 an adverse business scenario, correct, sir?

21 A Yes.

22 Q Now as far as you're aware no Basell witness involved in  
23 the preparation of this document has testified in this case  
24 or will testify, correct, sir?

25 A I don't know.

1 Q Okay. Basell's management, if we go to page 15,  
2 Basell's management's conclusion from the sensitivities that  
3 you cited was that the analysis shows that oil and commodity  
4 prices have only limited affect on Basell's projected  
5 results, whilst polymer demands and spreads are major key  
6 determining factors with major impact on Basell's  
7 profitability, correct?

8 A Yes.

9 Q Now you also refer, a little bit later on page 50, to a  
10 W shaped volatility, correct?

11 A Correct.

12 Q And you drew that from -- from another Basell document,  
13 correct?

14 A Yes.

15 Q The document from which you drew that citation doesn't  
16 indicate, does it, sir, the size of the oil price movements  
17 that were assumed in that sensitivity case, correct?

18 A I don't recall.

19 MR. WERDER: Let's take a look, if we could, Jason,  
20 at PX-22.

21 BY MR. WERDER:

22 Q This is the Basell business plan that you're citing for  
23 the W shaped sensitivity on page 50 of your report, correct,  
24 sir?

25 A Yes.

1 Q And if we go to page 29, that's the stress testing of  
2 the business plan that you're referring to and from which you  
3 derive the, quote, "W shaped volatility", correct?

4 A Correct.

5 Q And there isn't any indication there of the size of the  
6 movements in either direction that are being studied under  
7 that sensitivity case, correct, sir?

8 A Correct.

9 Q And you're not aware of any Basell witness involved in  
10 preparing this document who has testified concerning what  
11 sorts of assumptions may have gone into that case, correct,  
12 sir?

13 A Not as I sit here, no.

14 MR. WERDER: Your Honor, whatever the Court's  
15 pleasure is with respect to breaking is fine with me. I'm  
16 happy to keep going.

17 THE COURT: Let's go to 4:00.

18 BY MR. WERDER:

19 Q One of your criticisms, Mr. Tuliano, of management's  
20 projections is that management didn't reduce its projections  
21 for 2008 to 2011, based on Lyondell's performance after the  
22 merger agreement was signed, correct, sir?

23 A Yes.

24 Q And management's reasons for not doing that were set  
25 forth in various documents on which -- which you reviewed and

1 which you cited in your report, correct, sir?

2 A Yes.

3 Q And management set forth a number of reasons, as did the  
4 banks, for not reducing the 2008 through 2011 projections,  
5 based upon the short term under performance of Lyondell,  
6 correct?

7 A Based on the under performance of Lyondell for the  
8 second half of 2007.

9 Q And management and the banks -- you've reviewed plenty  
10 of documents, haven't you, sir, where both management and the  
11 banks are explaining why it is that they didn't feel it was  
12 necessary to alter the 2008 to 2011 projections, based on  
13 what they were observing of Lyondell in the second and third  
14 quarters of 2007, correct?

15 A Yes.

16 Q And CMAI was in fact projecting in the fall of 2007 that  
17 2008 was going to be a better year, margin wise for the  
18 industry, than 2007, correct, sir?

19 A I do not know what CMAI was projecting at that point.

20 Q Let me ask you to take a look at -- Defendant's Exhibit  
21 557. You can either look at it there or we'll put it up on  
22 the screen.

23 A Yes. I have it.

24 Q Thank you. So in the fall of 2007, CMAI was in fact  
25 recognizing that the industry had encountered some head winds

1 in 2007, but predicting that 2008 was going to be a better  
2 year, correct, sir?

3 A Yes.

4 Q And this is the type of information from industry  
5 experts that you would expect a company or companies like  
6 Lyondell and Basell to be taking into consideration in  
7 deciding what to do with respect to their projections for  
8 2008, correct, sir?

9 A Yes.

10 Q Now your evaluation of management's projections contains  
11 a lot of discussion about a potential future trough in the  
12 industry, correct?

13 A Yes.

14 Q And you're not contending, are you, sir, that Basell and  
15 Lyondell didn't have informed views on that topic?

16 A I'm contending that the views that they had on that  
17 topic resulted in management projections that do not reflect  
18 a peak to trough cyclicalality that had been experienced  
19 historically. It's a relatively flat peak to trough that's  
20 in the management projections. The decline is approximately  
21 nine percent for the peak to the trough, whereas in prior  
22 troughs that the decline has been as much as 40 to 45 percent  
23 from peak to trough.

24 So it was a very mild peak to trough projection within  
25 the management case projections. The management case



1 projections also had 2008 as the peak, whereas the other  
2 cases had 2007 as the peak. And that became much more  
3 pronounced.

4 THE COURT: When you say the other case, what do  
5 you mean?

6 THE WITNESS: The other cases that were evaluated  
7 at the time by the banks and others. And when the company  
8 under performed in 2007, it really accentuated that peak,  
9 effectively bringing 2007 down and making quite a slope into  
10 2008 and then a gradual decline after that.

11 So that's my view with respect to the peak to  
12 trough.

13 BY MR. WERDER:

14 Q Well, I know you have a different view or you've  
15 expressed a different view that the experts at Basell and  
16 Lyondell had, but are you contending, sir, was my question  
17 that the view that they had was not an informed view, even  
18 though it's a different view than you're currently opining  
19 to?

20 A I'm sorry, I'm having trouble answering the question.  
21 They certain had access --

22 Q Withdrawn, withdrawn. The views that management had  
23 with respect to potential future trough conditions were  
24 reported in, among other places, the November 2007 private  
25 supplement that you cite and rely on, correct?

1 A Yes.

2 Q And as reported there, management expected trough  
3 conditions for certain petrochemical products in 2010 and  
4 2011, correct?

5 A Yes.

6 Q And as reported there, they expected that other products  
7 In their portfolio, particularly products in the propylene  
8 oxide chain, would continue to produce strong results because  
9 of favorable supply and demand conditions, correct, sir?

10 A I believe that's right.

11 Q That was management's analysis of management's product  
12 portfolio, correct?

13 A Those were the views that were expressed in the  
14 memorandum.

15 Q Okay. And as set forth in that document, they didn't  
16 expect the U.S. refining trough through 2011 because of  
17 limited refining capacity in the United States and because of  
18 the huge capital expense and long lead time to build new  
19 refineries, correct, sir?

20 A That may be the case, I don't recall a specific quote  
21 from a sym, but that may be the case.

22 Q Okay. That may be the case. And the banks all had  
23 their own experts as well that were able to evaluate issues  
24 concerning future trough conditions, correct?

25 A Yes.

1 Q And the banks, based upon the materials that you've  
2 reviewed, were not expecting or anticipating a quick  
3 petrochemicals trough, were they, sir?

4 A I'd have to go back to the individual bank memos and as  
5 I sit here, I don't recall which banks used outside experts  
6 or had their own internal credit people and whether those  
7 individual credit people were their petrochemical or refining  
8 individuals or were people just from the credit side of the  
9 house. So there's a very a wide range of memos and people  
10 working on this at the time.

11 Q And does it refresh your recollection if I state that  
12 for example Citibank, based on CMAI, was not projecting a  
13 petrochemicals trough until 2011?

14 A Oh, that -- that sounds right.

15 Q Okay. Let's take a look at figure seven in your 2009  
16 report.

17 A Yes.

18 Q And one of the points that I think you made to His Honor  
19 a few moments ago was that the management cases didn't  
20 reflect, in your view, enough peak to trough cyclicity  
21 impact, correct, sir?

22 A Correct.

23 Q And that's the point that you're trying to make with  
24 your figure seven, correct?

25 A Well, there are two points. I think it's in the title.

1 The LBO was based on the most optimistic base case. I'm  
2 sorry. The LBO was based on the most optimistic base case  
3 projections. So it's showing those management cases at the  
4 very to. And it reflected minimal peak to trough.

5 Q Right. And you have made the point, have you not that  
6 the projections that the -- that were being made for this  
7 combined company for the anticipated future trough were  
8 higher than the actual results of the two companies operating  
9 separately in 2003, correct?

10 A Well, this shows historical EBITDA numbers and it  
11 compares to the management case projections.

12 Q And one of the points that you had made in criticizing  
13 the management case projections is that in your view they  
14 have a higher projected trough EBITDA than the two companies  
15 achieved as separate companies when they were operating as  
16 separate companies, correct?

17 And in fact that's exactly the point you made at the  
18 bottom of page 44 of your November 2009 report, correct?

19 A It was a comparison.

20 Q Right. So you're basically saying if we look at these  
21 two companies operating separately in 2003, trough  
22 conditions, they actually had, as separate companies,  
23 significantly lower trough EBITDA than the management  
24 projections were projecting for 2011 and that is somehow  
25 problematic in your view, correct, sir?

1 A It's an observation recognizing they were different  
2 companies at that time, they had different sets of assets.  
3 It was looking at the trough conditions at that time and  
4 presenting the data for what it is and making the  
5 observation. I think my concern primarily related to the  
6 slope of the management projections as opposed to that  
7 particular observation.

8 THE COURT: All right. Let's take our 15 minute  
9 recess.

10 MR. WERDER: Okay, Your Honor. Thank you.

11 (Recess taken 04:01 to 04:20)

12 THE COURT: Please be seated. Mr. Tuliano, you're  
13 still under oath. Mr. Werder.

14 MR. WERDER: Thank you, Your Honor.

15 BY MR. WERDER:

16 Q Mr. Tuliano, before the break we were talking about the  
17 anticipated future trough conditions and when -- and in  
18 particular we were talking about the point that you had made  
19 on page 44 of your 2009, November 2009 report about comparing  
20 the 2003 trough conditions to what management was projecting  
21 for 2011.

22 And when you made that point, were you aware, sir, that  
23 CMAI's Mr. Agawall (phonetic) advised in November 2007 that  
24 CMAI expected the anticipated 2011 trough to be shallower  
25 than the previous trough?

1 A I believe that was in the CMAI report.

2 Q So you were aware of that?

3 A Yes.

4 Q Okay. And the November 2007 offering document that you  
5 relied on specifically addressed the issue of bridging EBITDA  
6 trough to trough, correct, sir?

7 A Yes.

8 Q And if we take a look at Exhibit DX-219, this is the  
9 private supplement, the November 2007 private supplement, and  
10 you relied on this document for various things, did you not,  
11 sir?

12 A Yes.

13 Q And if we look at page 20 of the document, that presents  
14 a bridge that takes the 2001 to 2003 trough and explains why  
15 it is that management is expecting that the company -- the  
16 combined company is going to perform much better in 2011 than  
17 the two separate companies performed in 2001 through 2003,  
18 correct?

19 A Yes.

20 Q And you understood that this presentation was a -- when  
21 you did your work and you offered your opinions, you  
22 understood that this presentation was a bridge between  
23 2001/2003 and the trough that occurred there and the  
24 anticipated 2011 trough, correct, sir?

25 A Yes.

1 Q And when you were asked in deposition in 2009, you had  
2 not identified any of these bridge points that you rejected,  
3 correct, sir?

4 A I believe that's right.

5 THE COURT: You say you believe that's right?

6 THE WITNESS: Yeah, I didn't analyze each of these  
7 at that point.

8 BY MR. WERDER:

9 Q Okay. So you're not offering any opinion that the  
10 manner in which management bridged and explained the bridge  
11 from the 2001/2003 trough to the anticipated 2011 trough was  
12 incorrect, am I right, sir?

13 A Yes.

14 Q Let's take a look -- I want to turn the focus of the  
15 discussion for a few minutes to your discussion of Lyondell's  
16 projections. And I want to direct your attention to figure  
17 nine in your November 2009 report, sir.

18 A Yes.

19 THE COURT: On page 49?

20 MR. WERDER: On page 49, Your Honor, yes.

21 BY MR. WERDER:

22 Q And this chart relates to Lyondell's EBITDA projections,  
23 correct, sir?

24 A Yes.

25 Q And in particular what you're attempting to do is to

1 compare various Lyondell management projections to what you  
2 call Wall Street consensus, correct?

3 A Yes.

4 Q And you must think that's a probative comparison or you  
5 wouldn't have made it, correct, sir?

6 A Correct.

7 Q And your point, I take it, is that management's  
8 projections, particularly the July case, were higher than the  
9 -- what you call the Wall Street consensus, am I right?

10 A Yes, that and the long range plan, correct

11 Q Right. So both -- it appears from this -- am I reading  
12 this correctly that you are -- the information that you're  
13 providing is showing that both Lyondell's December 2006 long  
14 range plan and the July 2007 case that they provided to  
15 Access, Basell and the banks, were both above what you say is  
16 the Wall Street consensus?

17 A I think it's -- the analysis was presented, or the chart  
18 was presented, to show the July '07 management case as  
19 compared to the Wall Street consensus and also the pattern in  
20 the long range plan. So it's a look back at the long range  
21 plan and also look at the Wall Street consensus.

22 Q Now, sir, did you compare the projections for Lyondell  
23 in any of the three downside cases that you used for your  
24 analysis to what you call the Wall Street consensus?

25 A I may have, I don't -- I don't recall.



1 MR. WERDER: Excuse me, Your Honor.

2 THE COURT: That's okay.

3 MR. WERDER: I marked this for identification as  
4 Tuliano Cross Examination Exhibit 5, I believe.

5 (Tuliano Cross Examination Exhibit 5 was marked for  
6 identification)

7 BY MR. WERDER:

8 Q And what we've done here, sir, is to take your Wall  
9 Street consensus numbers and plot them next Merrill Lynch  
10 credit stress case, the two Merrill Lynch July 10 cases and  
11 the Citi downside case that you used. And it's true, is it  
12 not, sir, that the downside cases that you used as base cases  
13 are all significantly lower than what you report at the Wall  
14 Street consensus?

15 A I did not use the downside cases as base cases, I used  
16 them as downside cases.

17 Q Well, whatever -- fine. The downside cases that you  
18 used for purposes of your analysis are all billions of  
19 dollars below, in terms of projected EBITDA over the  
20 projection period, than what you call the Wall Street  
21 consensus, correct, sir?

22 A I think that's incorrect.

23 Q You think that's incorrect?

24 A Yes.

25 Q Well, certainly it's in the true of the case of the

1 Merrill Lynch April 10th credit case test, is it not, sir?

2 A Yes.

3 Q And it's certainly true in the case of the Citi downside  
4 case as well, is it not, sir? Let me make it a little bit  
5 easier. I've got a chart that totals them all up.

6 A That would be helpful.

7 Q Sorry about that. That's what I fumbling around for.

8 MR. WERDER: I'll mark this for identification as  
9 Tuliano Cross Examination Exhibit 6.

10 (Tuliano Cross Examination Exhibit 6 was marked for  
11 identification)

12 BY MR. WERDER:

13 Q So the -- assuming my math is right, the Merrill Lynch  
14 credit stress case is more than \$4 billion, in terms of its  
15 projections for Lyondell, more than \$4 billion short of the  
16 Wall Street consensus projection for Lyondell over the period  
17 2007 to 2011, correct, sir?

18 A That's what the chart shows. The number 8.2 looks or  
19 8.3 looks low to me. I would need to go back and check that,  
20 the numbers you have for the Merrill Lynch case.

21 Q Okay.

22 A They do not look correct.

23 Q All right. And about the numbers for the Merrill Lynch  
24 downside case and the Citi case, sir? Assuming my math is  
25 right, those are billions of dollars short over the period

1 2007 through 2011 of the Wall Street consensus, correct, sir?

2 A On one case, the Merrill Lynch downside, it's 1.3  
3 billion, assuming your math is right. And the Citi case the  
4 downside is approximately 3 billion, again assuming the math  
5 is correct. And that's relationship I would have expected,  
6 given that these are downside cases.

7 Q Okay. And the Merrill Lynch base case from July 10th is  
8 much closer to the Wall Street consensus than any of the  
9 cases that you used for purposes of your testing, correct,  
10 sir?

11 A That's what this indicates.

12 Q All right. That Merrill Lynch base case would pass your  
13 cash flow adequacy test, would it not, sir?

14 A There's something going on with these numbers. These  
15 numbers don't look right to me. I'm sorry.

16 Q Okay. We'll check them out overnight perhaps. One of  
17 the things that you rely upon for purposes of your opinion  
18 that management's projections were overly optimistic and  
19 unreasonable is a business outlook prepared by LBI in 2009,  
20 correct, sir?

21 A It may have been a document I looked at as a  
22 reasonableness check, but I don't recall as a --

23 Q Well, in your 2009 rebuttal report --

24 A Yes.

25 Q -- at Exhibit 1, you performed a comparison or you

1 illustrated a comparison of the downside cases and  
2 management's projections and what you call LBI August '09  
3 five year business outlook, correct, sir?

4 A Yes. That was done as a reasonableness check, it's  
5 not --

6 Q And that August 2000 -- withdrawn. That business plan  
7 was prepared in August 2009, two years after the July  
8 management projections were prepared, correct, sir?

9 A Correct.

10 Q And it was prepared in the midst of the financial  
11 crisis, was it not, sir?

12 A Yes.

13 Q And it was prepared in the midst of the great recession,  
14 was it not, sir?

15 A Yes.

16 Q It was prepared while the company was in bankruptcy for  
17 purposes of developing a bankruptcy exit plan, wasn't it,  
18 sir?

19 A Yes.

20 Q You can put that aside. I want to ask you a couple more  
21 questions about your cash flow adequacy test. And if we look  
22 at your main November 2009 report -- withdrawn.

23 You're -- let's look at page 57 of your November 2009  
24 report. And that presents the results of your cash flow  
25 adequacy tests, correct?

1 A Correct.

2 Q And the purpose for which you're presenting these, to  
3 use your words, "is as tests of the company's ability to  
4 withstand reasonably foreseeable downside stresses and  
5 contingencies by measuring its net cash flows under various  
6 scenarios", correct, sir? Don't look on that page for it, I  
7 was quoting from your deposition, I'm sorry.

8 A Yes. Yes. Correct.

9 Q So that was -- what these purport to be, and you are  
10 explaining them and putting them forward as the evidence of  
11 your opinions, is tests of the ability of the company to  
12 weather reasonably foreseeable downside stresses and  
13 contingencies, correct, sir?

14 A Yes.

15 Q And when you described them in your report, the  
16 scenarios that you had run, you characterized them on page 54  
17 as assessments of possible performance, correct, sir?

18 A Yes.

19 Q And you use your words very carefully when you write  
20 your reports, don't you, sir?

21 A Yes.

22 Q And you're aware -- you were aware, at the time you  
23 wrote the report, that witnesses from every bank that had  
24 prepared every one of the projections that you relied on said  
25 that they did not view those as reasonably foreseeable

1 scenarios, correct, sir?

2 A I don't recall witnesses from every bank using those  
3 words. If you want to represent that to me, that's fine,  
4 these were considered by the banks at the time. And given  
5 the range between these and the base projections, they  
6 represented contemporaneous downsides that were considered.  
7 Each projection has a set of assumptions associated with it  
8 that I believe indicate that the banks considered the  
9 assumptions under those projections.

10 And my experience in dealing with and I've been an  
11 expert for bank groups and individual lenders on many cases,  
12 is that they carefully consider these types of assumptions  
13 and do not lend assumptions that they do not believe are  
14 reasonably foreseeable.

15 Q Well, you referenced all the banks. The three cases  
16 that you ran came from -- two of them from Merrill and one  
17 from Citi, correct?

18 A Correct. I evaluated the other ones as well, but the  
19 ones that I ran, that's correct.

20 Q Understood. But for the three cases that you ran, you  
21 saw Mr. Melvani's testimony, Mr. Frangenberg's testimony, Mr.  
22 Guthrie's (phonetic) testimony. All of those people who were  
23 involved in preparing these projections said that they don't  
24 -- they weren't intended to represent reasonably foreseeable  
25 scenarios, didn't they, sir?

1 A That may be the testimony. I think the commentary  
2 underlying the projections tells a different story.

3 Q Okay. Let's turn to table five on page 57, if we could  
4 for a moment.

5 A Yes.

6 Q And table five is the results of the Citi downside --  
7 your analysis of the Citi case, correct?

8 A Correct.

9 Q And that case shows over four and half billion of Kepex  
10 in the five year projection period, does it not, sir?

11 A That is correct.

12 Q And when you looked at the Citi memo from which you drew  
13 this, did you observe that Citi applied the same Kepex  
14 numbers for all of its cases?

15 A I don't recall. That very well could be the case.

16 Q And did you go back to the last trough period in 2001 to  
17 2003 to make some assessment of what companies like Basell  
18 and Lyondell and their peer group did with respect to Kepex  
19 in trough situations?

20 A I have not.

21 Q Okay. It wouldn't be surprising, would it, sir, that in  
22 trough conditions people reduce their Kepex, particularly to  
23 the extent that they have discretionary Kepex in their Kepex  
24 expenditure plans, correct, sir?

25 A Kepex is typically something that they will reduce, that

1 is correct. In the context to a maintenance level, subject  
2 to, as we talked about earlier, regulatory issues and things  
3 like safety issues.

4 Q And I was -- in terms of the synergy evaluation for the  
5 Citi downside case, can you explain what you did there?

6 A I'm sorry, I don't understand your question.

7 Q Well, what synergies, what anticipated --

8 MR. WERDER: I apologize for that, Your Honor.

9 BY MR. WERDER:

10 Q What anticipated synergies are built in to this case?

11 A I would have to look at the original case to be able to  
12 tell you that.

13 Q You know that they would not have been the full  
14 synergies that management was expecting after the Lyondell  
15 and Basell teams got together and put their heads together to  
16 figure out the precise synergies that they were going to  
17 pursue, correct, sir? That estimate didn't exist at July  
18 15th, right?

19 A I think -- that's correct, but your question implies a  
20 very detailed process to come up with those synergies and I  
21 think the documentary -- the documents indicate something  
22 different.

23 Q My question was actually different. Let me try it a  
24 slightly different way. Whatever synergies Citibank was  
25 using for purposes of this case would not have been the final



1 synergies that management was anticipating after the work  
2 that the Basell and Lyondell teams did together, correct?

3 A Yes.

4 Q In terms of management's projections, I know that you  
5 had your opinions about them, but you haven't reported  
6 anywhere in any of your reports any re-do that you did of  
7 management projections to haircut them by some percentage  
8 that you believe they should be haircuted by based on errors  
9 that you've identified, that is not in any of your reports,  
10 correct, sir?

11 A Correct.

12 Q And we can agree, can we not, that if you had used  
13 management's projections or any of the base cases that any of  
14 the banks formulated off of management's projections in your  
15 cash flow test, you would -- the numbers would be positive,  
16 correct?

17 A On an annual basis, I think that's likely correct.

18 Q And on a cumulative basis as well, correct?

19 A On a cumulative basis. I was thinking of the quarters  
20 in terms of how those projections played out over the  
21 quarters. Many of the flaws in the management projections  
22 related to the -- how the EBITDA and the cash flow was  
23 projected within the first quarter of the year and the  
24 omissions within that construct that resulted in the  
25 liquidity crisis.

1 Q Well, whatever flaws you may have identified in  
2 management's projections, we can agree that they are set  
3 forth in your reports, correct?

4 A I believe that's the case. I obviously have done work  
5 since my reports and those observations that pertained to  
6 some of them.

7 Q Okay. I'm not asking you about anything that's not in  
8 your reports.

9 A I understand.

10 Q That criticism that you just raised concerning quarterly  
11 issues is not in any report that you have submitted as your  
12 direct testimony, is it, sir?

13 A It was a consideration, but I would have to --

14 THE COURT: Can you answer that question yes or no?

15 THE WITNESS: I don't know.

16 BY MR. WERDER:

17 A Okay. All right. Your reports will not speak for  
18 themselves, but somebody can read them and form their own  
19 conclusions with respect to them.

20 And nowhere in your report do we find any opinion with  
21 respect to the percentage haircut that could be inflicted on  
22 management's case and still pass your test, correct, sir?

23 A That's correct.

24 Q Now in your 2011 reports you offered some opinions  
25 concerning LBI's financial condition in March 2008, correct?

1 A Correct.

2 Q And you relied in part on an April 2008 memorandum by  
3 UBS, correct?

4 A Yes.

5 Q And that memorandum had some projections that UBS had  
6 prepared apparently in or about April of 2008, correct?

7 A Those projections were based on management's re-issuance  
8 of projections that were done in the first quarter of 2008  
9 and UBS took those projections and put them in their document  
10 and then ran some analysis on those projections.

11 Q Well, is it your recollection, as you sit here right  
12 now, that the UBS memo just recited management's projections  
13 and didn't report a new UBS base case and a new UBS downside  
14 case?

15 A No.

16 Q They did, right?

17 A Correct.

18 Q Okay. So in -- and you relied on that, right?

19 A Yes.

20 Q Okay. And that memo by UBS was prepared four months  
21 after the December 2007 closing, correct?

22 A Yes.

23 Q And it was prepared nine to 12 months after the downside  
24 case projections that you relied on for your opinions as of  
25 December 20th of 2007, correct?

1 A I'm sorry, how many months?

2 Q Nine to 12 months later than April to July of 2007?

3 A Yes.

4 Q I think my math would be right on that.

5 A Yes.

6 Q Okay. All right. And as of the time period when these  
7 new UBS projections were prepared, the business environment  
8 in the petrochemicals industry, was worse than it had been in  
9 early to mid 2007, correct?

10 A I believe that's correct.

11 Q All right. And oil prices, among other industry  
12 metrics, by April of 2008 oil prices had risen significantly  
13 over where they were in early to mid 2007, correct?

14 A Yes.

15 Q And if we take a look at -- let's take a look at Exhibit  
16 DX-311. This is the UBS memo that you relied on in your 2011  
17 reports, correct, sir?

18 A Yes.

19 Q And at the time that it wrote this memo, UBS was well  
20 aware of projections concerning oil prices, correct, sir?

21 A Yes.

22 Q And they were not anticipating oil prices going from  
23 wherever they were in April of 2008 to \$145 a barrel by July  
24 of '08, were they, sir?

25 A I don't recall within the context of the memo.

1 Q Let's take a look, if we good, at page four of the  
2 document. That's a little hard to read, I realize, but UBS  
3 was presenting a crude oil forecast based on CMAI information  
4 and they certainly don't show it going to 145, since they  
5 don't even have that on their graph, correct, sir?

6 A That's correct. They do show \$130 a barrel in the  
7 subsequent page on the -- in the exhibit.

8 Q And the projection that they have here is showing oil  
9 prices declining, does it not, sir?

10 A I believe that's correct.

11 Q And when UBS prepared this memo, they were well aware of  
12 LBI's liquidity position, correct, sir?

13 A Yes, I believe they understood the liquidity issues.

14 Q And in fact the memo was prepared to evaluate the  
15 company's request for additional liquidity, correct?

16 A Correct.

17 Q And there's nowhere in this memo, written in April of  
18 2008, where UBS says that there is a liquidity crisis,  
19 correct, sir?

20 A I would have to go through the memo. There is a number  
21 of commentaries in the bank memos around this time about the  
22 company being in a liquidity crisis.

23 Q Well, the UBS conclusion, if we look at page eight, was  
24 that the fundamental credit story remains sound, correct,  
25 sir?

1 A I'd characterize it as an observation. I don't know if  
2 it's a conclusion, but it's an observation.

3 Q Okay. It's words that the UBS team wrote on the page of  
4 the memo that they drafted to seek approval from UBS'  
5 management for participating in the up sizing of the ABL  
6 facility, correct, sir?

7 A Yes.

8 Q And they indicate, if we go a little bit further down in  
9 that paragraph, that they refer to a need to have close to a  
10 billion five of liquidity to buffer it from future oil and  
11 gas volatility and margin pressure, correct?

12 A Yes.

13 Q Then if we go over to the next page, they indicate that  
14 the company should have approximately two billion of  
15 liquidity after the ABL extension, which is in excess of the  
16 1.5 billion needed to buffer oil and gas price volatility and  
17 margin pressure, correct, sir?

18 A Yes.

19 Q Now when you did your analysis in 2009, you did some  
20 work using UBS' new downside case, correct?

21 A Correct.

22 Q And you didn't test the assumptions in that case, you  
23 took the assumptions as they were presented by UBS, correct?

24 A Yes.

25 Q And you were aware, when you did that, that UBS witness

1 Doug Lane had testified in detail about they prepare these  
2 downside cases and the purpose for which they prepared --  
3 they were prepared. You were aware of that testimony when  
4 you decided to use that case, correct, sir?

5 A Correct.

6 MR. POHL: Objection, Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 BY MR. WERDER:

10 Q Yes. And Mr. Lane in fact described their downside  
11 cases as a doom and gloom scenario, did he not, sir?

12 A I don't recall the specific commentary.

13 Q Let's take a look at Mr. Lane's declaration, paragraph  
14 56. And he's talking about the downside case that they  
15 created in the fall of 2007, but it describes it -- which is  
16 what he updated in April of 2008, correct, sir?

17 A This is his recent declaration?

18 Q He didn't file a recent declaration. This is his  
19 declaration from December of 2009.

20 THE COURT: Had you reviewed that testimony?

21 THE WITNESS: I reviewed those declarations.

22 THE COURT: Thank you.

23 MR. POHL: May I make a point, Your Honor.

24 THE COURT: You can make an objection, if you have  
25 a legal objection, but don't make a point.

1 MR. POHL: Okay. I'm objecting because --

2 THE COURT: A legal objection calls for about two  
3 words. What's your legal objection?

4 MR. POHL: Hearsay.

5 THE COURT: Overruled.

6 BY MR. WERDER:

7 Q So, Mr. Tuliano, when UBS prepared the -- you can keep  
8 that up for a second. When UBS prepared the April 2008 memo  
9 that you relied on, they were updating their fall 2007 base  
10 and downside cases, correct?

11 A I don't believe that's correct.

12 Q Okay. Do you take issue with Mr. Lane's testimony that  
13 when they prepared downside cases, they were doom and gloom  
14 scenarios?

15 A I don't take issue that he said it. I do take issue  
16 that the cases presented in these memos were -- the  
17 implication that these were not reasonably foreseeable  
18 downside cases and I think that has been pretty consistent  
19 from the various financial institutions and yet these cases  
20 were prepared, there are very detailed assumptions with these  
21 cases. They were run against the credit. They represent, as  
22 in many other cases, contemporaneous downside cases that the  
23 lenders considered.

24 So I find the subsequent testimony to be inconsistent  
25 with the level of detail that are in the assumptions and the



1 stated purpose of the cases.

2 Q I see. So did you go and examine the UBS downside case  
3 to attempt to refute the testimony that Mr. Lane gave that  
4 their downside cases were designed to take all reasonably  
5 foreseeable risks and apply them all at once to the combined  
6 company to see how it could perform if all those bad things  
7 happened at once?

8 MR. POHL: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: I'm not sure what you're asking did I  
11 do. I considered his testimony. I analyzed the cases. He  
12 talks about reasonably foreseeable risks. And many times  
13 reasonably foreseeable risks happen together and that's what  
14 ultimately you want to make sure a company is capitalized to  
15 be able to deal with is not only one adverse event, but a  
16 potential confluence of adverse events and I think that's  
17 essentially what he's saying.

18 BY MR. WERDER:

19 Q My question was different though, sir. My question  
20 was did you go back and look at how UBS prepared its downside  
21 cases in order to refute Mr. Lane's testimony about how they  
22 were prepared?

23 A I was not attempting to refute his testimony.

24 Q Okay. So you didn't do that?

25 A No.

1 Q Okay. In addition to preparing a new downside case in  
2 April of '08, UBS prepared a new base case as well, did they  
3 not?

4 A I believe that's correct.

5 Q And if we go back to Exhibit DX-311 and take a look at  
6 page 33, UBS is describing a management case, a UBS base case  
7 and a UBS downside case, correct?

8 A Yes.

9 Q And the management case is the new management case that  
10 management had put out in April of 2008, correct?

11 A That's one of the cases they put in April.

12 Q And the UBS base case is UBS' own base case, is it not,  
13 sir?

14 A I believe that's the case.

15 Q And it's different than the management case, correct?

16 A Yes.

17 Q It's lower than the management case, correct?

18 THE COURT: I'm sorry, did you answer?

19 THE WITNESS: I didn't answer, I'm sorry.

20 MR. WERDER: Yeah, we can --

21 THE COURT: Stop. Let him answer your question.

22 MR. WERDER: Sorry. You know what, I'll withdraw  
23 the question.

24 THE COURT: Okay.

25 MR. WERDER: Keep that page up there, would you,

1 Jason? Thank you.

2 BY MR. WERDER:

3 Q UBS' observation with respect to the new UBS base case  
4 is that it provides for strong liquidity through the  
5 projection period remaining greater than 1.9 billion,  
6 correct, sir?

7 A That is their observation, yes.

8 Q And the projection period was a five year projection  
9 period that ran out to 2012, am I right?

10 A It goes to 2011.

11 Q I stand corrected, thank you.

12 A Oh, I'm sorry --

13 Q No, the base case.

14 A The management case goes to 2011, the base case --

15 Q The company --

16 THE COURT: One at a time.

17 MR. WERDER: Sorry.

18 THE COURT: One at a time.

19 MR. WERDER: Yes.

20 BY MR. WERDER:

21 Q The company's case ran to 2011, correct?

22 A Yes.

23 Q That was the management case.

24 A Correct.

25 Q The UBS base case and the UBS downside case both ran to

1 2012, correct?

2 A That is correct.

3 Q And if we look at -- well, I'm not going to do that,  
4 withdrawn.

5 THE COURT: Just so we're clear, we're going to go  
6 to 5:20 today, because of the late start this morning, we'll  
7 make up a little bit of that time. We started this afternoon  
8 at 2:20, we'll go to 5:20 and then break.

9 MR. WERDER: Thank you, Your Honor.

10 BY MR. WERDER:

11 Q Now in your February 2011 report at table 9, you  
12 reported the result of running of your cash flow adequacy  
13 test on UBS' new downside case, correct?

14 A Yes.

15 Q And that analysis was done from the perspective of April  
16 2008, not from the perspective of December 2007, correct?

17 A Yes.

18 Q And you used their downside case, their new downside  
19 case, not their new base case, am I right?

20 A Yes.

21 Q And you purported to show a cash flow deficit in 2008,  
22 right? The 147 million?

23 A Yes.

24 Q And Mr. Purchell (phonetic), when he commented on your  
25 February 2011 report, identified an error in your

1 calculation, correct?

2 A I believe that's right.

3 Q And the error related to the manner in which you had  
4 calculated the term loan A mandatory repayment schedule, am I  
5 right?

6 A I don't recall specifically. We did submit an updated  
7 exhibit.

8 Q Right. And that is in your report in June 2011, you  
9 agreed, at page 11 of that report, that the error that Mr.  
10 Purchell had identified was in fact an error, correct?

11 A Yes.

12 Q And you corrected that error with Exhibit II, Exhibit  
13 Roman II, in your June 2011 report, correct

14 A Yes.

15 Q And when you corrected your error, the \$147 million  
16 deficit that you had claimed for 2008 became a 557 million  
17 positive number, correct?

18 A Yes.

19 Q And the -- that's about a \$700 million difference,  
20 correct?

21 A Yes.

22 Q And when you corrected the error that Mr. Purchell had  
23 identified for the five year projection period as a whole,  
24 the deficit that you had previously asserted became a  
25 positive number, correct?

1 A Yes.

2 Q And in fact what originally you had reported as a  
3 cumulative deficit of 1.6 -- withdrawn. When you corrected  
4 the error, you didn't identify any deficit at all until 2011,  
5 correct?

6 A Yes.

7 Q And the deficit that you are identifying --

8 THE COURT: I'm sorry, on a cumulative basis, the  
9 first deficit is in 2010.

10 MR. WERDER: Are you looking at the June report,  
11 Your Honor?

12 THE COURT: No, I'm sorry. What page? I'm looking  
13 at Exhibit 2.

14 THE WITNESS: Yeah, I'm having a little trouble  
15 with my own exhibits here too.

16 MR. WERDER: We did submit that with the report,  
17 Your Honor.

18 THE COURT: The rebuttal report?

19 MR. WERDER: Correct.

20 THE COURT: I'd appreciate if you could tell me  
21 what table -- the exhibit, what are you looking at it?

22 THE WITNESS: Exhibit 2.

23 MR. WERDER: The copies of the report -- do you  
24 have it Your Honor?

25 THE COURT: Yes, I do.

1 BY MR. WERDER:

2 Q And so the --

3 THE COURT: Have you finished your answer?

4 THE WITNESS: I'm not sure I have.

5 BY MR. WERDER:

6 Q Yeah, go ahead.

7 A What I was pointing out was that the deficit, the first  
8 year of the deficit, was 2010, 750 million. And at that  
9 point in time the leverage ratio was up to 10.6 times, the  
10 leverage ration, debt to EBITDA.

11 So this test is no more than just looking for a  
12 cumulative deficit. It looks at a number of factors  
13 including individual deficits in an individual year, how much  
14 cash flow is actually being generated by the business plan,  
15 what the leverage ratios are and whether the company would be  
16 bankable company at that point in time, keeping in mind that  
17 the company is still carrying 24 billion in debit through  
18 this process. Leverage is increasing and the cash flow is  
19 anemic and then goes negative.

20 Q Well, UBS looked at the same downside case that you're  
21 performing your analysis on here, didn't they, sir?

22 A Yes.

23 Q And they concluded, based on their analysis of their  
24 downside case that the liquidity was going to be adequate,  
25 correct and above what they believed was necessary?

1 A We reviewed the commentary and those are the comments  
2 that they made. They have their comments in the memo as  
3 well.

4 Q And just so that we're clear about the UBS downside  
5 case, that UBS downside case is showing synergies that were  
6 not only well below what management was projecting, but well  
7 below what the company was in fact achieving in 2008,  
8 correct?

9 A In the downside case?

10 Q Yes.

11 A Yeah, it was downside case for them as well.

12 Q And the synergies --

13 THE COURT: Hold it. We may be ships passing in  
14 the night.

15 MR. WERDER: Sorry, Your Honor.

16 THE COURT: I heard your question, I heard the  
17 answer. I don't think you got an answer to the question you  
18 asked.

19 MR. WERDER: No. Let me rephrase the question.

20 BY MR. WERDER:

21 Q Mr. Tuliano, I maybe have sped up a little bit for the  
22 last 20 minutes. The UBS downside case that you're analyzing  
23 in your chart is a downside case that assumes synergies well  
24 below both what management was projecting and well below what  
25 was in fact being achieved, correct?



1 A I think that's incorrect.

2 Q Well, the projections were for a total -- were for 42.7  
3 million in 2008, 130 million in '09 and 210 million in each  
4 of 2010 through 2012. That's well below what management was  
5 projecting, is it not, sir?

6  
7 A I'm sorry, I'm not understanding your question. I  
8 thought those were the management. You're looking at the  
9 case -- in the downside case. Yes, that's correct.

10 Q Yes. So the downside case that is the subject of your  
11 presentation in Exhibit 2 is a downside case that considers  
12 hundreds of millions of dollars less in synergies than what  
13 management was expecting, correct, sir?

14 A Correct.

15 Q And you didn't run your cash flow on the April -- the  
16 new April 2008 base case that UBS developed and put forward  
17 to its credit committee, correct?

18 A Correct.

19 Q And if you had done that, if you had used that case,  
20 what you called a cumulative deficit of 500 million would be  
21 a cumulative positive number in the vicinity of 3.7 billion,  
22 correct, sir?

23 A I have not done the math. If you have it, I'm happy to  
24 look at it. It is not downside case though, but happy to  
25 look at your calculation.

1 MR. WERDER: I'm going to mark this for  
2 identification as Tuliano Cross Examination Exhibit 7.

3 (Tuliano Cross Examination Exhibit 7 was marked for  
4 identification)

5 BY MR. WERDER:

6 Q And obviously we prepared this, you didn't prepare this,  
7 but using the EBITDA projections from the new base case and  
8 otherwise duplicating your results, it would appear that your  
9 cash flow test would generate a total cumulative surplus of  
10 \$3.7 billion over the period of time covered by the  
11 projections, correct?

12 A Yes.

13 Q And the conclusions that UBS reached, based on its new  
14 base case and its new downside case and the new management  
15 case in April of 2008 are very different than the opinions  
16 that you're offering here, correct?

17 A Well, UBS has a number of observations. I've not seen  
18 them issue opinions as to capital adequacy of the nature that  
19 I've issued.

20 Q Well, let's look at Mr. Lane's declaration, which I  
21 think we established earlier you had reviewed, correct?

22 A Yes.

23 Q And Mr. Lane testified in paragraph 78 of his  
24 declaration that in April 2008 UBS continued to have a great  
25 deal of confidence in the company on a long term basis in

1 terms of performance and a great deal of confidence that it  
2 was adequately capitalized and had the ability to pay its  
3 debts as they became due. That was his testimony, correct?

4 A Yes.

5 Q And that was very consistent with the conclusions set  
6 forth in the memo that UBS wrote for its credit committee,  
7 where it commented on its expectations concerning liquidity,  
8 correct, sir?

9 A I don't agree with that.

10 Q All right. Let's turn to your covenant analysis in your  
11 2009 report. You -- let me have the right page. I guess  
12 we're in the leverage section, right? Yeah, page 58.

13 MR. WERDER: Which report are we looking at?

14 MR. WERDER: This is November 2008 report, the  
15 first report.

16 THE COURT: 2009.

17 MR. WERDER: 2009, yes. November 7, 2009.

18 BY MR. WERDER:

19 Q And you're here analyzing potential covenant breaches,  
20 correct, sir?

21 A Yes.

22 Q And the banks that finance the deal evaluated potential  
23 covenant breaches as well, did they not, sir?

24 A Not in this way, but they certainly were involved in  
25 setting the covenants.

1 Q All right The Citibank July 15th memo that you relied  
2 on and from which you drew the downside case projections  
3 contained a valuation of LBI, correct, sir?

4 A I believe that's right.

5 Q And on Citibank's valuation LBI was expected to have  
6 billions of dollars of equity value, correct, sir?

7 MR. POHL: Objection, Your Honor. Hearsay.

8 THE COURT: Overruled. He said he considered this  
9 in doing his report. He did consider it. Overruled.

10 BY MR. WERDER:

11 Q The Citi memo that you relied on indicated that the  
12 company would have billions of dollars of equity value,  
13 correct, sir?

14 A That very well may be. I was focusing on capital  
15 adequacy ultimately and there's another expert that will  
16 address the valuation.

17 Q Understood. And your report doesn't set forth the  
18 valuation, correct?

19 A Correct.

20 Q And it doesn't analyze or criticize the Citi valuation,  
21 does it?

22 A No.

23 Q And for companies with billions of dollars in equity  
24 value, violations of covenants are highly unlikely to lead to  
25 the failure of the business, correct, sir?

1 A That's correct.

2 Q And companies with billions of dollars of equity have  
3 lots of options for dealing with potential covenant  
4 violations, don't they?

5 A I believe that's correct.

6 Q And if Citibank was right and all the other banks were  
7 right that LBI at inception had significant equity value,  
8 that would provide compelling evidence that it was adequately  
9 capitalized and able to pay its debts as they mature, would  
10 it not, sir?

11 A I believe that's inconsistent with everything that I've  
12 looked at.

13 Q Well, I didn't ask you whether it was inconsistent, I  
14 asked if Citi and the other banks were right that they were  
15 significant equity value, then that would provide compelling  
16 evidence that it was adequately capitalized and able to pay  
17 its debits as they mature, correct?

18 A I would have to see that equity value and compare it to  
19 the overall leverage and the industry, the amount of leverage  
20 that was taken in the industry and so forth.

21 MR. WERDER: Mark this as Tuliano Cross Examination  
22 Exhibit 8.

23 (Tuliano Cross Examination Exhibit 8 was marked for  
24 identification)

25 BY MR. WERDER:

1 Q And if we look at page 38 of your report, you state in  
2 paragraph 100:

3 "As a threshold matter it is important to recognize that  
4 for Adelphia, a company with over 3.7 billion in equity  
5 value, a violation of financial covenants, which is in  
6 essence a technical violation rather than a payment default,  
7 would be highly unlikely to lead to the failure of the  
8 business. Unlike a company with little or no equity value,  
9 Adelphia had a variety of options available to it in the  
10 event of potential covenant issues, including obtaining any  
11 necessary waivers, renegotiating such covenants to reflect  
12 changing expectations with respect to the business, raising  
13 equity and paying down debt, selling assets and paying down  
14 debt or slowing its growth to preserve cash and reduce debt  
15 needs."

16 Correct, sir? That was your testimony, was is not?

17 A Yes, absolutely.

18 Q And it's true as a general -- this is not an opinion  
19 that's specific to Adelphia, correct, sir? LBI in fact had  
20 billions of equity value, like the banks said that it did and  
21 as Citi estimated in the document that you relied upon, that  
22 would provide compelling evidence that it was adequately  
23 capitalized and able to pay its debts when due, correct?

24 A I can't agree with that. Adelphia, the 3.billion  
25 Adelphia had approximate 3 billion in debt. This would be

1 the functional equivalent of LBI having 20 billion of equity  
2 value. Adelphia was a cable company in a market that was no  
3 subject to trough conditions. This transfer was as of 1999,  
4 this was a very robust economy at that point in time. Cable  
5 companies have very robust valuations and ultimately very  
6 different that LBI in the midst of a credit crunch as an LBO.  
7 Adelphia was not a leveraged buyout.

8 Q And if we look further down on the page in paragraph  
9 101, you say:

10 "Additionally Professor Sheked (phonetic) dismisses  
11 billions of dollars in equity value by virtue of his flawed  
12 balance sheet analysis, which when properly considered  
13 provides compelling evidence that Adelphia was adequately  
14 capitalized."

15 That was your testimony in the Adelphia case, correct,  
16 sir?

17 A Correct.

18 Q And is it your testimony here today that the presumed,  
19 assumed for purposes of my question, existence of billions of  
20 dollars of equity value as the banks indicated existed in LBI  
21 does not provide compelling evidence of its ability to -- of  
22 its adequate capitalization and it's ability to pay its  
23 debits, when due, is that your opinion?

24 A Yes. Very different circumstances, very different  
25 company, very different time, very different amount of

1 leverage, very different optionality. With respect to the  
2 company at that point in time, very different access to the  
3 capital markets, completely different analysis.

4 MR. WERDER: It's a good breaking point, Your  
5 Honor.

6 THE COURT: Thank you. All right. We'll recess  
7 for the day. We'll resume at 9:00 in the morning. Hopefully  
8 we'll end at 5:00 tomorrow. I have another hearing at 5:30,  
9 a first day hearing at 5:30.

10 You can leave everything in the courtroom. I just  
11 ask that tomorrow that you cover up anything that -- I don't  
12 think it will be a very long hearing, but you should cover up  
13 anything that you consider being sensitive or confidential  
14 tomorrow, otherwise you can leave everything here. The  
15 courtroom will be locked up when everybody leaves.

16 MR. WERDER: Are we on the usual rule of witnesses  
17 on cross examination not consult with counsel?

18 THE COURT: That's correct.

19 MR. WERDER: Thank you, Your Honor.

20 THE COURT: Thank you very much. You're excused  
21 for the day. We'll resume tomorrow at 9:00.

22 (Court in recess at 05:23 p.m.)  
23  
24  
25



CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.  
that I am not financially interested in the action.



October 19, 2016

---

Jennifer Wilson, AD/T #623

Certified Court Transcriptionist

For AudioEdge Transcription, LLC